IN THE HON'BLE HIGH COURT OF JUDICATURE OF BOMBAY AT PORVORIM, GOA

P.I.L. W.P. No. 53/2024

THE GOA FOUNDATION ...**Petitioner**

Vs

STATE OF GOA & ORS. ...**Respondents**

AFFIDAVIT IN REJOINDER OF THE PETITIONER

I, Dr. Claude Alvares, aged 76 years, Secretary of the Petitioner organisation abovenamed, do hereby solemnly affirm and state as under:

1. This affidavit is filed in response to the affidavit-in-reply dated 12.03.2025 of the Chief Town Planner filed on behalf of the TCP Department, opposing the grant of interim relief as prayed for in the PIL WP.

2. I say and submit that during the pendency of this petition, this Hon'ble Court has disposed of PIL WP No. 16/2023 which challenged the vires of Section 17(2) of the TCP Act, 1974 and

the constitutional validity of the Rules and Guidelines notified in relation to implementation of Section 17(2). The affidavit-in-reply is dated 12.03.2025, but the judgment was issued on 13.03.2025. Hence the affidavit does not deal with the findings of the said judgment. In fact, this Hon'ble Court's judgment in the PIL challenging Section 17(2), as delivered, is bound to have repercussions on the judicial determination of the challenge to Section 39A raised via this PIL WP, since the principal grounds of challenge are fairly similar in both petitions.

3. It is pertinent to bring to the notice of this Hon'ble Court that this Petitioner and others had challenged the vires of Sections 16B, 17(2) and 39A of the TCP Act, 1974 via 3 separate petitions, filed at different periods of time.

4. The PIL WP No. 44/2018 challenged the vires of Section 16B of the TCP Act. This provision was withdrawn on 22.02.2024 and by the same notification, Section 39A was introduced into the TCP Act. All applications filed under Section 16B were reportedly cancelled. The order disposing of PIL WP No. 44/2018 is dated 15.10.2024 and is enclosed at **Annexure A**.

5. The PIL WP No.16/2023 challenged the vires of Section 17(2) of the TCP Act. This provision was introduced via amendment on 01.03.2023. The judgment reading down the provisions of the section was passed on 13.03.2025. The said judgment

quashed and set aside the Rules and Guidelines under Section 17(2) as being ultra vires. At the request of the State Government, a stay of the judgment for 6 weeks has been granted by this Hon'ble Court.

6. The present P.I.L No. 53/2024 was filed in September 2024 and vide its order dated 15.10.2024, this Hon'ble Court recorded that the question of interim relief can be considered post-Diwali vacation on 13.11.2024 in view of the affidavit dated 10.10.2024 of the Chief Town Planner stating that the Government has decided to re-issue notifications under Section 39A for inviting public comments, by providing details of the applicant, location and area of the property, etc. Such new notifications were subsequently issued.

7. In December 2024, the Petitioner pressed for consideration of interim relief, however, the court could not take up the matter. However, counsel for the Respondent State orally stated that no final orders regarding the provisionally approved applications for change of zone under Section 39A would be notified pending further hearing of this matter. This situation has continued till the present day. Thereafter, the Court indicated that the challenge to Section 39A would be taken up immediately after the PIL WPs challenging Section 17(2) were disposed of.

8. In all 3 PIL WPs, though there may have been specific differences in the section, rules and guidelines issued, the principal challenge was common: whether the Regional Plan 2021, a statutory plan determining the land use of the state, drawn up by experts after vast consultation with all stakeholders including Panchayats and the various departments of government, could be modified at the request of private parties, without disclosure of the basic information or evidence relating to whether the proposed change was in public interest. This is the crux of the matter regarding modifications sought to be made to the Regional Plan - 2021 under all sections introduced into law till date.

9. In its judgment concerning 17(2), this Hon'ble Court has come to a finding that such *ad hoc* zone changes made not in public interest, but at the request of private parties and which virtually mutilate the R.P. by creating a 'zone within a zone' are not sustainable in view of Articles 14 and 21 of the Constitution, besides being contrary to the very scheme of the TCP Act itself. This conclusion is related expressly in several paras of the judgment dated 13.03.2025, some of which are reproduced below:

> "18.5: The effect of entertaining an application under Section 17(2) is tantamount to a change of zone in respect of that portion of the property in the ownership of a private owner within the zone…… The scientific

studies, research, survey, the constitution of the task force, comments received from the public, involvement of the local authorities and ultimately the release of the RP-21 on the basis of not only the recommendations of the Task Force, but a SLC constituted, is a pointer that while preparing the RP, it is the interest of the community as a whole which is taken into consideration."

"18.6: Section 17(2) does not at all take into consideration the interest of the community as a whole but is guided by the applications made at the behest of private owners for zone change. ….The environmental concerns in a region like Goa which has 54.06% (188,59,43,700m2) of ECO Zone-I and 26.29% (116,34,42,300 m2) of ECO Zone-II will have to far outweigh the interests of private owners."

"22. We are satisfied that the manner in which the rules are framed and the Circular is issued is not in furtherance of a development in public interest, by maintaining a balance between sustainable development vis-a-vis the environmental issues but is concerned with the interest of private land owners…..Such plot-by-plot conversion, creating a zone within a zone, virtually has the effect of mutilating the RP, prepared after such an elaborate exercise. "

A copy of the judgment dt. 13.03.2025 in P.I.L. W.P. 16/2023 is enclosed at **Annexure B** to this affidavit.

10. Another critical issue specific to the challenge to Section 39A is that while it states that there will be no change of zone in respect of any eco-sensitive land, and further, that the alteration / modification shall not alter the overall character of the existing Regional Plan, the Rules notified under Section 39A prescribe only a limited list of eco-sensitive lands and not all the eco-sensitive lands listed (as ECO-I and II) in the RP-2021. When one notes that ECO-I and II together comprise no less than 83% of the land in Goa, with ECO-I occupying 54.06% and ECO-II occupying 26.29%, it can easily be seen that change of zone made to lands in the ESZ-II category (*including Orchard, Natural Cover, Command Areas of irrigation projects etc.*) which are not termed eco-sensitive in the Rules notified under Section 39A, will easily alter the overall character of the RP-21, substantially increasing the area for development from the existing 16.95% per the RP-21. There is no outer limit or cap on the extent of zone changes that can be made under Section 39A. The character of the RP is reflected in the RP 2021 itself and the various procedures that were adopted in its formulation. The act of removing Ecozone II from the list of prohibited or restricted developmental activity governing the plan has no basis in the RP 2021 itself,

nor is it sanctified in any statute. The rules under Section 39A cannot override the principal features of RP 2021.

11. This brings us to the fact-based challenge made in the instant petition to raise doubts about some of the modifications gazetted for objections/suggestions which are discussed at Annexure A of the affidavit filed in support of the prayers for interim relief [*pg. 153*]. There are 20 proposed zone changes taken up in Annexure A, all of which are at the behest of and for the exclusive benefit of private parties. A total of 11 out of 20 have been approved by the Board after receipt of comments from the members of the public but these are yet to be approved by the government till date, while 9 are yet to be placed for final approval before the TCP Board. The government has already agreed that it will not notify these changes till further orders in this petition. A similar status quo operated in the matter of 16B zone changes, where no final notifications were issued due to this Honourable Court's intervention.

12. To underline the controversial nature of the changes to the land use under Section 39A as highlighted in Annexure A of its affidavit in support of interim relief, the petitioner has now drawn up a table of these 20 cases and provided its remarks via-a-vis the affidavit-in-reply of the Chief Town Planner. Only information available as of date to the petitioners is entered. The table comprising the 20 changes is enclosed hereto at **Annexure C.**

13. The analysis provided in the table at Annexure C (see remarks column) casts serious doubts on the claims made in para 130 of the affidavit-in-reply filed by the C.T.P., to the effect that the plots provisionally recommended for change of zone "are in compliance with the terms of the impugned section and the impugned rules and that they do not alter the character of the RP and/or the ODP." A prime example is the case of Sy. No.104 (Parsem) discussed from paras 48-59 of the C.T.P.s affidavit in reply. The area requested for zone change is almost the entire table-land or plateau. The changes are at the behest of two real estate companies. The entire plateau is surrounded by steep slopes (beyond 25%). By approving zone change, there is no public interest whatsoever. The zoning change to settlement is bound to unsettle the plateau and its water regime. The plateau is in fact part of the grazing lands of the village cattle. It is also biodiversity rich. A copy of the plateau ecosystem and the extent of the land on the plateau sought to be converted is at **Annexure D Colly**. At present, there are only two illegal quarry sites. Apart from this, there is no settlement, except at the foot of the plateau below. As per the RP 21 no road officially exists though the CTP insists on the existence of an 8 metre road servicing the plots. An illegal road is now being constructed from one side of the plateau.

14. The Petitioner further states that in matters concerning land use, actions under precautionary principle are required to be considered for stay or status quo orders in view of the fact

that such actions/decisions, if they lead to development and material change of the character of the land which are irreversible in character, would defeat the prospect of granting any reliefs to the petitioners which are claimed in public interest and with the welfare of the society at large. Therefore, applications for interim relief/stay in such matters are required to be seriously considered and set apart from requests for interim reliefs in other cases simply on the grounds of irreversibility due to the nature of material changes allowed as a consequence on the ground.

15. The Petitioners aver that post the judgment dated 13.03.2025 in the PIL 16/2023, this Hon'ble Court would find that the balance of convenience is with the petitioners in so far as this Court has held with the petitioners in their contention that changes in the RP must be in public interest and that none of the zonal changes allowed under 17(2), which also originated with similar private applications, was sustainable.

16. I state that the contents of paragraphs 1, 3 (part), 6 (part), 8 (part), 10 (part), 11 (part), 12 (part), 13 (part), 14 (part) and 15 (part) of this affidavit are true and correct as per my own knowledge and official documents/records/judgements; and that the contents of paragraphs 2, 3 (part), 4, 5, 6 (part), 7, 8 (part), 9, 10 (part), 11 (part), 12 (part), 13 (part), 14 (part) and 15 (part) are my submissions made on legal advice I believe to

be true and correct. No part of it is false and nothing material has been concealed therefrom.

Solemnly affirmed at Porvorim, Goa
this the 25th day of March 2025 Deponent

Amrut

IN THE HIGH COURT OF BOMBAY AT GOA

PIL WRIT PETITION NO. 44 OF 2018

GOA BACHAO ABHIYAN,
THR. ITS CONVENOR, DR.
SABINA MARTINS AND ANR. … Petitioners

Versus

STATE OF GOA, THR. ITS
CHIEF SECRETARY AND 6 ORS. …Respondents

Ms Norma Alvares, Senior Advocate with Ms M. Simoes and Mr Om D'Costa, Advocates for the petitioners.
Mr A. D. Bhobe, Special Counsel for the State.

WITH
PIL WRIT PETITION NO. 16 OF 2019

FEDERATION OF RAINBOW WARRIORS,
THR. ITS SECRETARY, DAVID
RODRIGUES AND 3 ORS. …Petitioners

Versus

THE TOWN AND COUNTRY PLANNING
DEPARTMENT, GOVT. OF GOA,
THR. THE CHIEF TOWN PLANNER
AND ANR. …Respondents

Mr A. D. Bhobe, Special Counsel for respondent No.1-State.
Mr Pravin Faldessai, Additional Government Advocate for respondent No.2.
Mr Rajesh Naik, Chief Town Planner present in the Court.
Mr Vinod Kumar Chandra, Town Planner present in the Court.

WITH
PIL WRIT PETITION NO. 17 OF 2021

GOENKAR, THR. ITS PRESIDENT,

JOAQUIM SANTANA LEONARDO FERNANDES …Petitioner

Versus

STATE OF GOA,
THR. THE CHIEF SECRETARY,
GOVT. OF GOA AND ANR. …Respondents

Mr A. D. Bhobe, Special Counsel for the respondents-State.
Mr Rajesh Naik, Chief Town Planner present in the Court.
Mr Vinod Kumar Chandra, Town Planner present in the Court.

CORAM: M. S. KARNIK &
VALMIKI MENEZES, JJ

DATED : 15th OCTOBER 2024

P.C.:

1. In view of the repeal of Section 16B of the Town and Country Planning Act with effect from 03.10.2018, learned counsel for the petitioners submits, on instructions, that the petitioners do not want to proceed with the petitions any further. The status of total cases received under Section 16B of the TCP Act as well as the Notifications placed on record by Mr Bhobe are marked 'X' for identification. In this view of the matter, the petitions are disposed of. All contentions are kept open. No costs.

VALMIKI MENEZES, J **M. S. KARNIK, J**

Signed by: AMRUT NAGESH TARI
Designation: Personal Assistant
Date: 16/10/2024 15:41:05

IN THE HIGH COURT OF BOMBAY AT GOA

PIL WRIT PETITION NO.16/2023

1. The Goa Foundation,
through its Secretary, Dr. Claude Alvares, Age 75 years, Having Regd. Office at Room No 7, Above Mapusa Clinic,
Mapusa, Goa - 403507,

PAN No. AAAAG0249C,
Income: Rs 10-15,00,000/- per annum (approx.),
Registration No. - 23/Goa/86,
Email id: goafoundation@gmail.com.

2. The Khazan Society of Goa,
through its Treasurer, Jack Sukhija, age 44 years, with regd. office at A 19/8, La Marvel Colony,
Dona Paula, Goa - 403004,

PAN No. AAKAK3608B,
Income: Rs 50,000/- per annum (approx.),
Registration No. - 54/Goa/2022,
Email id:
contact@khazansocietyofgoa.org

3. Goa Bachao Abhiyan, An NGO,
through its Convenor, Sabina Martins, age 58 years, r/o 2, Treeveni, St. Inez, Panaji, Goa - 403601. Driving License No. GA0720010082622, Income: Rs 10,00,000 per annum (approx.). ... PETITIONERS

Versus

1. The State of Goa, through its Chief Secretary, Secretariat, Porvorim, Goa - 403501.

2 The Town and Country Planning Dept., thr. the Chief Town Planner (Planning), 2nd Floor, Dempo Towers, Patto, Panaji, Goa - 403001.

3. D Pal Buildcon Private Limited, thr. its Director, Dharam Pal Kukreja, 12/5, Palmohan Apartment, Punjabi Bagh (West), Delhi New Delhi-110026.

4. Mr. Konidela Ramcharan Tej, Plot No. 1006, Road No. 50, Jubilee Hills, Hyderabad, Telangana, India - 500033.

5. M/s Gangareddy Infra Private Limited, Plot No 302, APSEC MLA & MP Colony, Jubilee Hills, Shaikpet, Rangareddi, Hyderabad, Telangana - 500033, thr. its authorized representative, Mr. Prashant Vishnu Shirodkar, Age 34 years, Indian National, R/o. Premavati Niwas, H. No. 356/5C, Sodiem, Siolim, Bardez, Goa - 403517.

6. Jai Raghuveera Constructions Pvt. Ltd, Flat No. B1, Suvidha Building, First Floor, La Campala Colony, Miramar, Panaji, Goa - 403001.

7. Luxive Estates LLP, thr. its partner, Anil Kumar Mehndiratta, Plot No 13, TF, Road No. 8, East Punjabi Bagh, Punjabi Bagh Sec-III, New Delhi, West Delhi - 110026.

[Amendment carried per order dt. 05.07 M.C.A. 1415/202 Bob

8. Ryago Homes Pvt.Ltd, 61 Viraj Silverene Chs Ltd, 321, Hill Road, Opp Mehboob Studio, Bandra (W) Mumbai, MH 400050.

9. Jaglax Realty Private Limited, T-16, Andheria Mode, Mehraulia New Delhi, South Delhi - 110030.

10. Harinder Paul Singh, Khorlim, Mapusa, Bardez, Goa-403507.

11. M/s. Amalgamated Engineers Private Ltd., Ground Floor, 326, Shrimant Bldg., Opp. Syndicate Bank, Queula, Dhavali, Ponda, Goa-403401.

12. M/s. Ira Exotica Pvt. Ltd., thr, its Authorized Representative, Mariano Šequira, H. No. 12/B, Maina Curtorim, Salcete, Goa-403709.

13. Norman Edward D'Souza, c/o H. No. 325, Kholpa Waddo, Canca, Parra, North Goa-403510.

14. Moffie Pereira e Rodrigues, Rajnil Crystal, 1st Floor, Flat No.

102, Aquerr Alto, Near Power House, Salcete, Goa, 4030

15 The Public Works Department, Work Div XIII, thr. the Assistant Engineer S.D.I, Public Works Department, Head Office, Altinho, Panaji, Goa - 403001.

16. Mavis S. Botelho, H.No, 985/B, Santa Cruz, Ilhas, Goa 403005.

17. M/s. De Souza Estate Holdings Private Limited, through its Director, Ralph De Souza, G-5, Monalisa Naika Wado, Calangute, Goa, 403516.

18. M/s. S.K. Constructions, Office No. 6, Staywell Apartment, Calangute - Mapusa Rd, Verla Canca, Bardez, Goa, -403510.

19. Sand and Sea Developers LLP, 2009, Ground Floor, Outram Lines, Guru Tegh Bahadur Nagar Delhi-110009.

20. Rajesh Manohar Parab, H.No. 83/3-G, Santa Cruz, Bastora, Mapusa, Bardez, Goa - 403507.

21. Abhai Ashok Poi Angle, H.No 615, Dandevaddo, Chinchinim, South Goa - 403715.

22. M/s. Samarth Developers, thr. its Partner, Mr. Amit. S. Korgaonkar, M-63, Housing Board

Colony, Alto Porvorim, Bardez,
Goa - 403521. … RESPONDENTS

Ms Norma Alvares, Senior Advocate with Mr Om D'costa and Ms M. Simoes, Advocates for the Petitioner.
Mr. Fredun De Vitre, Senior Advocate, with Ms. Prachi Dhanani, Ms. Rohini Jaiswal, Mr. Raushan Kumar i/b Veritas Legal for Respondents No.1 and 3.
Mr. Sharan Jagtiani Senior Advocate with Adv. Rohini Jaiswal, and Ms. Prachi Dhanani, And Mr. S.Priolkar. Additional Government Advocate i/b Veritas Legal for Resp. No. 2.
Mr. D. Lawande with Mr J. Mathew, Ms. Shrawani Wagle, Advocates for the Respondents No. 7, 11 and 17 in PILWP 16/2023.
Mr. Ryan Menzes, along with Mr. Nigel Fernandes, Advocates for the Respondent No.18.
Mr. V. Rodrigues with Laban Carvalho, Advocates for the Respondent No.9.
Mr. Gauravvardhan Nadkarni, Advocate for the Resp. No. 17.
Mr. Shivan Dessai with Ms. Riya Amonkar, Advocate for Respondent No. 3.
Mr. Jitendra P. Supekar, Advocate for the Respondent No.19, 20, 22.
Ms. Valencia Fernandes, Advocate for Respondent No. 6.

PIL WRIT PETITION NO.2317/2024 (F)

Pilerne Citizen Forum, Registered Society
under The Societies Registration Act, 1872
under Registration No. 518/GOA/2007
with the Registrar of Societies of
Sub-Registrar, Panaji – Goa
Through its Secretary,
Mr. Hilario Lobo, 55 years of age,
Son of late Mr. Miguel Lourenco Lobo.
Resident of H.No. 190 Volvaddo,
Pilerne, Bardez, Goa – 403114 … PETITIONER

Versus

1. The State of Goa
Through its Chief Secretary
Secretariat, Porvorim,
Bardez- Goa.

2. The Chief Town Planner (Planning)
Town and Country Planning Department,
Dempo Tower, 2nd, floor, Patto Plaza,
Panaji, Goa

3. The Chief Town Planner (Land Use)
Town and Country Planning Department,
Dempo Tower, 2nd Floor, Patto Plaza, Goa.

4. The Sarpanch and the Secretary
The Village Panchayat of Pilerne-Marra,
Pilerne, Bardez, Goa.
5. The Deputy Town Planner
The Town and Country Planning
Department, Mapusa, Bardez, Goa.

6. The Collector North Goa District,
Collectorate Building, Panaji-Goa.

7. The Collector South Goa District,
Collectorate Building, Margao-Goa

8. The Goa Coastal Zone Management
Authority, Patto Plaza, Panaji, Goa

9. Principal Conservator of Forest
Goa Van Bhavan, Forest Department,
Altinho, Panaji, Goa 403001

10. Command Area Development
Authority (CADA)
Office at CADA Building,
T.I.P. Complex, Karaswada,
Mapusa, Bardez, Goa 403526.

11. Water Resources Department
Sincahi Bhavan, Near Police station,
Porvorim, Goa 403521

12. Goa State Bio Diversity Board
Opp Saligao Seminary.
Saligao Bardez, Goa 403511

13. Directorate of Panchayats
Miles High Building,
Patto, Panaji, Goa

14. Devassy alias Sebastian Perumpully
kadan, Address: Floor. Techno Park,
Building No. 12, Chogm road,
Porvorim, Goa.

15. Savio dos Santos,
Clo Satt-Adhar Builders,
Address; Ist, Floor, Lobo Building,
18" June Road, Opp. Saraswati
Mandir Building, Panaji.

16. Mr. Yogesh Pratapsing Jadhav
Co, Pudhari publications Pvt. LId.
Ist. Floor Emerald Towers.
St. Inez, Panaji Goa.
Address: Plot No. 30. Indira Niwas.
Nagala Park. Kolhapur.

17. Mrs. Sheetal Mandar Patel
Clo, Pudhari publications Pvt. Ltd.
0st. Floor Emerald Towers.
St. Inez, Panaji Goa.
Address: Plot No. 30, Indira Niwas,
Nagala Park, Kolhapur.

18. Inframeze Construction
Represented by Mr. Vijay Gopi.
Address: Off. No. 70/G- 3 (old) and
C 415 (new), Ground floor, Chimbel,

Panaji Goa,403006, Mob. 9021348918

19. V.K.S.D. Ventures LLP
Address: 6343. 1"Floor, Gali No.1,
Block 7B. Dev Nagar, Delhi.

20. Sagar Infra Project Pvt Ltd,
Address: 200. Ground Floor, Butram Lines,
GTB Nagar. Delhi, 110009.
Mob: 9891053070 /9818869610

21. T.S Enterprises.
Address: B-61, Wazirpur Industrial
Area, Delhi - 110052.
Mob: 9422434392.
22. Prabhavati Kashinath Parab
Address: H.No. 91l, Ghoteli No.2,
Keri, Sattari - Goa - 403505.

23. Zephyr holdings & Others
Through P.O.A Pierre Lobo,
Periwinkle Villa, H. No. 435/30- 9b.
Green Valley. Chogm Road.
Alto - Pilerne, Porvorim.
Bardez -Goa. 403002. … RESPONDENTS

Mr J. J. Mulgaonkar with MsS. Parulekar, Advocates for the Petitioner.
Mr P. Arolkar, AGA for Resps No.1, 2, 3, 5 to 11 and 13.
Mr. Shivan Desai, Advocate for the Respondent Nos. 16, 17 and 23.
Mr. Pranay A. Kamat Advocate for the Respondent No. 4.
Mr. Shubham Priolkar, Additional Government Advocate for R-12 (GSBB)
Mr. Jitendra P. Supekar, Resp. Nos. 19 and 20.

WITH

PIL WRIT PETITION NO.17/2023

1. Mr. Pravinsingh Arjun Shedgaonkar,
Son of Shri. Arjun Shetgaonkar
38 years of age, Indian National,
R/o. H no. 1615/2, adjacent to High Court,
'Satyabhama Krishna', Malim, Betim,
Bardez – Goa Phone No. 98811799973
Fax No. Nil PAN Number: BYWPS4158N
National Unique Identity Number: 763241740883
Email: pravinsingh03@gmail.com
Income: Rs. 1.5 Lakhs /- p.a

2. Mr. Mayur Sharad Shetgaonkar,
Son of Shri. Sharad Shetgaonkar,
35 years of age, Indian National,
R/o. H no. 229, Kattewada,
near Brahman temple, Morjim, Pernem-Goa,
Phone No. 8237422456
Fax No. Nil PAN Number: CTUPS8781D
National Unique Identity Number:
920887033630
Email: mayurrocks2010@gmail.com
Income: Rs. 1.2 Lakhs /- p.a

3. Mr. Swapnesh Bhanudas Sherlekar,
Son of late Shri. Bhanudas Sherlekar,
39 years of age, Indian National,
R/o. H no. 284, Shirodwadi
Mulgao, Bicholim -Goa
Phone No. 9372730066
Fax No. Nil PAN Number: BTAPS2713Q
National Unique Identity Number:
712837105340 Email:
Swapnesh.sherlekar
@gmail.com Income:
Rs. 1.2 Lakhs /- p.a … PETITIONERS

Versus

1. The State of Goa, Through its Chief Secretary,
having Office at Secretariat, Porvorim-Goa.

2. The Chief Town Planner (Planning)
Town & Country Planning Department,
Patto, Panjim – Goa.

3. The Deputy Town Planner, Pernem Taluka
office, Town & Country Planning Department
Pernem-Goa.

4. The Executive Engineer (Roads)
Works Division, XIII (R)
P.W.D., Mapusa – Goa.

5. The Collector North Goa
The Collectorate Building,
Panjim – Goa.

6. The Deputy Collector of Pernem
Pernem, Goa

7. The Secretary,
Village Panchayat of Morjim.
Morjim, Bardez-Goa.

8. M/s. Prasanna Developers Pvt. Ltd.
Through its Director Mr. Vinod Palyekar.
Having its office at no.6, Anandvan,
1 floor, near Old Asilio hospital,
Mapusa-Goa.

9. M/s. Ahadh Engineering Construction
Having its office at 2-CA, 2nd floor.
Neelkamal Arcade, Panjim-Goa, 403001.

10. M/s. Gangareddy Infra Private Limited.
Having its registered office at Plot no. 302.
APSEC. MLA & MP Colony, Jubilee Hills.

Shaikpet. Hydrabad. Rangareddi.
Telangana India 500033.
Through its authorised representative
Mr. Prashant Vishnu Shirodkar
Age 34 years, Indian National
R/o. Premavati Niwas, H. no. 356/5C.
Sodiem, SiolimBardez Goa 403517.

11. Mr. Konidela Ramcharan Tej,
Major of age, Indian National
Rlo. Plot no. 1006, Road No. 50,
Jubilee Hills, Hyderabad,
Telangana, India 500033. … RESPONDENTS

Mr. Nigel Da Costa Frias, with Mr. S. Coutinho, Adv. For Petitioner.
Mr. Neehal Vernerkar, AGA for R 1 to 6.
Mr. Abhijit Gosavi Mr. G. Kerkar V., Adv. For R-7.

WITH

PIL WRIT PETITION NO.10/2024

1. Mr. Pravinsingh Arjun Shedgaonkar,
Son of Shri. Arjun Shetgaonkar
P.lL Writ Petition no.
39 years of age, Indian National.
R/o. H no. 1615/2, adjacent to High Court,
Bardez – Goa 'Satyabhama Krishna', Malim, Betim,
Phone No. 98811799973
Fax No. Nil H.no.2024
PAN Number: BYWPS4158N
National Unique identity
Number: 763241740S83
Email: pravinsingh03@gmail.com
Income: Rs. 3.5 Lakhs /- p.a

2. Mr. Mayur Sharad Shetgaonkar,
Son of Shri. Sharad Shetgaonkar,
36 years of age, Indian National.

R/o. Hno. 229, Kattewada,
near Brahman temple, Morjim, Perncm -Goa
Phone No. 8237422456
Fax No. Nil PAN
Number: CTUPS878 1D
National Unique Identity
Number: 920387033630
Email: mayurrocks2010@ gmail.com
Income: Rs. 1.2 Lakhs/-p.a

3. Mr. Swapnesh Bhanudas Sherlekar.
Son of late Shri. Bhanudas Sherlekar.
40 years of age, Indian National.
R/o. H no. 284, Shirodwadi
Mulgao, Bicholim - Goa
Phone No. 9372730066
Fax No. Nil PAN Number:
BTAPS27 1 3Q
National Unique Identity Number:
712837105340
Email: Swapnesh.sherlekara
gmail.com Income: Rs.2.5 Lakhs p.a … PETITIONERS

Versus

1. The State of Goa.
Through its Chief Secretary, having
Office at Secretariat.
Porvorim-Goa.

2. The Chief Town Planner (Planning)
Town & Country Planning Department,
Patto, Panjim-Goa.

3. The Deputy Town Planner,
Pernem Taluka office.
Town & Country Planning Department,
Pernem-Goa

4. The Collector of North Goa
Collectorate Building,

Panjim, Tiswadi-Goa

5. The Deputy Collector of Pernem
Pernem, Goa

6. The Secretary.
Village Panc:at of Morjim.
Morjim, Bardez Goa.

7. M/s. Gangareddy Intra Private Limited
Col Mr. Prashant P. Shirodkar,
H. no. 356/5C, Premavati Niwas,
Sodiem, Siolim, Bardez - Goa 403517.

8. Mr. Preetham Reddy Nalla,
Major of age, Indian National
Col Mr. Prashant P. Shirodkar,
H. no. 356/5C. Premavati Niwas,
Sodien, Siolim, Bardez - Goa 403 51.

9. Mr. Konideba Ramcharan Tej,
Major of age, Indian National
R/o. Plot no. 1006, Road No. 50,
Jubilee Hills, Hydrabad,
Telangana, India 500 033

10. M/s. Magic Hospitalities Pvt. Ltd.
Clo Mr. Prashant P. Shirodkar,
R/o. Premavati Niwas, H. no. 356/5C,
Sodiem, Siolim, Bardez Goa 403517.

11. Shri Ritesh Chodankar,
Major of age, Indian National
R/o H.No. 601, Kamat Royale.
Caranzalem, Goa. … RESPONDENTS

Mr. Nigel Da Costa Frias, with Mr. S. Coutinho, Adv. For Petitioner.
Mr. Siddarth Samant, AGA for R 1 to 5.
Mr. R. Frias, Adv. For R-11

MISC. CIVILAPPLICATION NO.2695/2024 (F)
IN
PIL WRIT PETITION NO. 17/2023

Federation of Rainbow Warriors
through its General Secretary,
Abhijit Prabhudesai,
Aged: About 57 years,
Having his registered office at:
Flat C-1, Shamiana Co-op Housing
Society, Comba, Margao, Goa 403601. … APPLICANT

IN THE MATTER BETWEEN:

1. Mr Pravinsingh Arjun Shedgaonkar,
Aged: About 38 years,
Having his address at: R/o H No 1615/2,
adjacent to High Court,
Satyabhama Krishna, Malim, Betim,
Bardez, Goa

2. Mr. Mayur Sharad Shetgaonkar,
Aged: About 35 years,
Having his address at:
R/o H No 229, Kattewada,
Near Brahma temple,
Morjim, Pernem, Goa.

3. Mr. Swapnesh Bhanudas Sherlekar,
Son of late Shri Bhanudas Sherlekar,
Aged: About 39 years of age,
Having his address at:
R/o H No 284, Shirodawadi,
Mulgao, Bicholim, Goa.

Versus

1. The State of Goa,
through its Chief Secretary,

Having his registered office at:
Secretariat, Porvorim, Goa 403521.

2. The Chief Town Planner (Planning),
Having his registered office at:
Town & Country Planning Department,
Patto, Panaji, Goa.

3. The Deputy Town Planner,
Having his registered office at:
Pernem Taluka office, Town & Country
Planning Department, Pernem, Goa.

4. The Executive Engineer (Roads),
Having his office at:
Works Division XIII P.W.D,
Mapusa, Goa.

5. The Collector North Goa,
Having his office at:
The Collectorate Building,
Panaji, Goa.

6. The Deputy Collector of Pernem,
Having his office at: Pernem, Goa.

7. The Secretary, Village Panchayat of Morjim,
Having his office at: Morjim, Bardez, Goa.

8. M/s Prasanna Developers Private Limited,
Through its Director Mr Vinod Palyekar,
Having his registered office at:
No. 6, Anandvan, 1st Floor,
Near Old Asilio Hospital, Mapusa, Goa.

9. M/s Ahadh Engineering Construction,
Having its registered office at:
2-CA, 2nd floor, Neelkamal Arcade,
Panaji, Goa 403001.

10. M/s Gangareddy Infra Private Limited

Having its registered office at:
Plot No 302, APSEC, MLA & MP Colony,
Jubilee Hills, Shaikpet, Hydrabad, Rangareddi,
Telangana, India 500033
Through its authorized representative,
Mr. Prashant Vishnu Shirodkar,
Having his address at:
Premvati Niwas, H no 356/5C,
Sodiem, Siolim, Bardez, Goa 403517

11. Mr. Konidela Ramcharan Tej,
Having his address at:
Plot no. 1006, Road No. 50,
Jubilee Hills, Hyderabad,
Telangana, India 500033. … RESPONDENTS

Ms. Gayatri Singh (through Video Conference), Sr. Advocate, along with Ms. Shreya Mohapatra (through Video Conference) and Ms. Caroline Collasso, Advocates for the Applicant.

WITH
WRIT PETITION NO.527/2024

Mr. Sanjay Shinde, aged 46
Son of late Harishchandra Shinde,
Service, married, r/o of H. No. 814/2
Mandopa, Navelim, Salcete, Goa
Email: carvalholabano8 @gmail.com
Phone no: 7083939957 … PETITIONER

Versus

1. The State of Goa,
Through its Chief Secretary,
Secretariat, Porvorim, Goa-403501

2. The Town and Country Planning Department
Through the Chief Town Planner (planning),
2nd Floor, Dempo Towers, Patto, Panaji,
Goa - 403001

3. Deputy Collector & Sub- Divisional
Officer, Margao, Goa.

4. Collector South Goa, Having Office at
Matany Saldana Complex, Margao, Goa.

5. Mary Joseph Sidney Torcato alias
Joseph Lawrence Sidney Torcato.
s/o late Thomas F. F. X. S. Torcato,
major in age, married, business, resident
of H. No. 400/A, Baga,
Ambelim, Salcete, Goa-403723. … RESPONDENTS

Mr V. Rodrigues with Mr Laban Carvalho, Advocates for the Petitioner.
Ms. Akshata Bhat, Additional Government Advocate for Resp. Nos. 1 to 4.
Mr. J. E. Coelho Pereira, Senior Advocate with Mr. Bernard Fernandes, Advocate for the Respondent No. 5.

CORAM: M. S. KARNIK &
NIVEDITA P. MEHTA, JJ.

Reserved for Order on: 06th MARCH 2025

Pronounced on: 13th MARCH 2025

ORDER: (M. S. Karnik, J.)

1. **THE CHALLENGE :**

(a) The petitioners in public interest challenge the constitutional validity of section 17(2) of the Goa Town and Country Planning

Act, 1974 **("the TCP Act")**, introduced by the Goa Town and Country Planning (Amendment) Act, 2023 (Act No. 4 of 2023), which came into force on March 1, 2023. Also under challenge is the Goa Town and Country Planning (Alteration/Modification in the Regional Plan for Rectification of Inconsistent/Inadvertent Zoning Proposals) Rules, 2023 **("the 2023 Rules")** made thereunder, on the grounds that they are violative of Article 14 and Article 21 of the Constitution of India.

(b) The petitioners contest the re-zoning of individual plots in establishing zoning areas, arguing that this process violates the principles of planned development under the TCP Act.

(c) The proviso to Regulation 6.1.1(d) of the Goa Land Development and Building Constructions Regulation, 2010 (The Building Regulations) formulated under the Goa (Regulation of Land Development and Building Construction) Act, 2008 and the definition of 'zone' as provided under Section 2(129) of the Building Regulations. During the course of the arguments, on instructions, the petitioners did not press this challenge.

(d) During the course of arguments, the Guidelines approved and adopted by the Government of Goa under Rule 5 of the TCP Rules, 2023, issued vide circular dated March 27, 2023, are challenged. It is the contention of the petitioners that if they succeed in their challenge to Section 17(2) of the TCP Act or in their challenge to the TCP Rules, 2023, the Guidelines will fall.

(e) It is made clear that we have not considered the challenge to the individual approvals granted under Section 17(2).

2. **BRIEF FACTS PLEADED IN THE PETITION**

(a) The TCP Act was enacted with the aim to facilitate organized development and land use. Key components of the TCP Act include the preparation and notification of a Regional Plan **("RP")**, establishment of Development Plans for designated Planning Areas, and implementation of town planning schemes aligned with these plans.

(b) The first RP for the State of Goa, Regional Plan 2001 **("RP-2001")**, was notified and enacted in December 1986. The focus of RP- 2001 was two fold; strengthening the inter-regional socioeconomic and functional unity, and developing the vital relationship with the surrounding hinterland.

(c) Subsequently, vide the Goa Town and Country Planning (Amendment) Act of 1988, Section 17, as it then stood, was amended to allow the Government of Goa to revise a notified RP at any time after its notification. This amendment eliminated the prerequisite for a minimum interval of five years to elapse from the publication of the RP before any such revision could be undertaken.

(d) A revised RP i.e. Regional Plan 2011 **("RP- 2011")** was notified on 10.08.2006**.** However, RP-2011 was short-lived due to public dissatisfaction owing to the extensive conversions of

green zones to settlement zones leading to its de-notification by the Government in the year 2007.

(e) In due course, the Government of Goa appointed a Task Force to draft a comprehensive RP for the prospective horizon year 2021. The Final RP-2021 was notified in segments i.e. Release 1 (Land Use Plans for Pernem and Canacona) was notified on 25.11.2010, Release 1 (in part) (Land Use Plans for Sattari, Ponda and Quepem) was notified on 28.04.2011, Release 2 (Land Use Plans for Bicholim, Sanguem and Dharbandora) on 15.09.2011, Supplementary Release to Release 2 (Land Use Plan for Usgao) on 29.09.2011 and Release 3 (Land Use Plans for Tiswadi, Mormugao, Salcete and Bardez) on 20.10.2011. The horizon year for RP 2021 is 2021.

(f) In response to the significant opposition to RP-2021, by an order dated 09.04.2012, the Secretary of the TCP Department placed the plan in abeyance. Subsequently, on 04.06.2012, by a further direction, the TCP Department stipulated that pending the drafting and notification of a fresh plan, RP-2021 would remain on hold, with RP-2001 serving as the reference plan. However, by an order issued by the Chief Town Planner (Planning) **("CTP")** on 28.03.2018, RP-2021 was re-notified and reinstated into effect.

(g) On 30.08.2018, the Goa Legislative Assembly enacted the Goa Town and Country Planning (Amendment) Act, 2018 (Act No. 9 of 2018), introducing Section 16B, allowing individual requests for changes in zoning in the RP.

(h) On 01.03.2023, the Government of Goa notified the Goa Town and Country Planning (Amendment) Act, 2023 **("2023 Amendment Act")**, introducing Section 17 sub-section (2) to the scheme of the TCP Act with effect from 02.03.2023, enabling re-zoning of individual plots in RP-2021 due to errors.

(i) The amended Section 17(2) allows alterations/ modifications or additions to the RP due to inadvertent errors or due to inconsistent/incoherent zoning proposals. The main plank of the challenge in the petition is that such an amendment contradicts Sections 9 to 17 of the TCP Act, which require public disclosure and input before changes. The emphasis is that these sections protect the public rights concerning environmental planning.

(j) According to the petitioners, Section 17(2) gives unbridled and unregulated power to the Government to make changes to the RP 2021 under the guise of correcting errors/inadvertent errors in the RP. It is their case that Section 17(2) violates Articles 14 and 21 and contradicts Articles 243 and 243G of the Constitution, which requires consultation with Panchayats and local bodies during development plan preparation.

(k) Pursuant to the notification of the 2023 Amendment Act, the Government, on 16.03.2023, issued the 2023 Rules, outlining the procedure for considering the applications received under Section 17(2). It is the contention of the petitioner that these Rules contradict the TCP Act 1974 particularly Sections 9 to 17 of the Act. Empowered by the Act, shortly after the 2023 Amendment Act, the CTP and the Minister began granting

approval to individual cases. Subsequently, a Scrutiny Committee was notified by the Government of Goa on 25.05.2023 vide Notification bearing No. 361/1/TCP/485/2023/1687 in the Official Gazette of the Government of Goa, Series II No. 8, by which time thirteen proposals under Section 17(2) had already been granted approval. According to the petitioners, all areas converted into settlements by these decisions were previously designated as paddy fields, natural cover, or orchards.

(l) Further, vide Circular No. 21/1/TCP/GTCPACT/2023/987 dated 27.03.2023, the Town and Country Planning Department **("TCP Department")** outlined Guidelines for the alterations/modifications to be carried out under Section 17(2) **("the Guidelines")**.

(m) It is the contention of the petitioner that under the 2023 Amendment Act, the CTP has the authority for considering the applications. However the Scrutiny Committee is now largely responsible for considering the applications under Section 17(2) diminishing the CTP's role. The 2023 Rules eliminate the role of statutory bodies like the TCP Board, and expert opinions are now sought on the basis of certificates from private Architects which goes against the very concept of a plan developed in public interest.

(n) According to the petitioners Section 17(2) of the TCP Act allows private persons to seek arbitrary zonal changes due to the vague definition of 'Zone' in the Building Regulations. Zone

was clearly defined in the Planning and Development Authority (Development Plan) Regulations, 1989. In 2010, the Goa Building Regulations were enacted changing the definition of 'zone' in Regulation 2(149). According to the petitioners this definition is ambiguous and allows misleading interpretations disregarding the dictionary meaning. It is the case of the petitioner that the character of an area is crucial for demarcating zones but the current definition permits any plot to be classified as a separate zone. Thus, Section 17(2) of the TCP Act permits private entities to request zonal changes on a plot-by-plot basis, undermining the principles of planned and sustainable development. This forms the basis of the challenge presented in the petition.

3. **SUBMISSIONS**

(A) Ms. Norma Alvares, learned Senior Advocate representing the petitioners in one of the petitions, advanced the following submissions:

i. Section 17(2) coupled with the 2023 Rules are contrary to the provisions of the TCP Act, 1974. Section 17(2) of the TCP Act, 1974 violates the principle of planned development which is an integral facet of the Right to Life as enshrined in Article 21 of the Constitution of India. Section 17(2) is inconsistent with the provisions of the TCP Act, particularly Chapter III, which outlines the framework for planned development by permitting arbitrary and unregulated changes to the zoning classifications under the pretext of "corrections of inadvertent error" or addressing

"inconsistent or incoherent zoning", which disrupts the systematic planning envisaged by the Act.

ii. The 2023 Rules are ultra vires the parent Act, on the ground that delegated legislation cannot travel beyond the provisions of the parent Act. There is no such power conferred by the statute for the delegation of the decision making under Section 17(2) to any other authority. The bulk of the decision making power is delegated by the State Government to the CTP. No power to delegate is conferred by Section 17(2). The delegation of power to the Scrutiny Committee also suffers from the same infirmity. Any delegation of power not permitted by the Statute would be ultra vires the parent Act and liable to be interfered with.

iii. Section 17(2) infringes upon fundamental rights enshrined under Articles 14 and 21 of the Constitution of India, enabling private interest to override public welfare. It deviates from this principle by allowing selective zoning changes that favor those with the financial capacity to influence such alterations. This selective approach not only contravenes the principle of public interest but also undermines the statutory framework designed to serve the general populace. Land-use planning and zoning are crucial for the broader public good and should prevail over individual property rights to ensure equitable and sustainable development.

iv. Section 17(2) and the 2023 Rules framed thereunder suffer from the vice of manifest arbitrariness on account of their disruption of the planning scheme under the TCP Act by enabling

of selective and discretionary zoning only to the affluent populace; vague and ambiguous bases for enacting changes in the RP; exclusion of public input and involvement in the zone change process at variance with the Act; and hasty approvals granted for zone change even overruling objections and dissent by department & government officers, constituting a violation of Article 14 and diminishing the constitutional guarantees of transparency and accountability in governance.

v. The scope of judicial review concerning legislative amendments, such as those in Section 17(2) of the TCP Act, includes scrutiny for violations of fundamental rights, particularly, manifest arbitrariness. Judicial review acts as a safeguard against legislative actions that may violate constitutional guarantees, particularly when such amendments threaten planned development and public interest. The Court's responsibility is to ensure that legislative changes align with constitutional principles and uphold citizens' fundamental rights.

vi. Ms Alvares, learned Senior Advocate, relied on the following decisions in support of her submissions:

1. Manohar Joshi v. State of Maharashtra, (2012) 3 SCC 619 (paras 54-65 and 199-200)
2. Akhil Bharatiya Upbhokta Congress v. State of Madhya Pradesh (2011) 5 SCC 29 (paras 74-79)
3. Naresh Chandra Agrawal v. ICAI, 2024 SCC OnLine SC 114 (para 35)
4. Virendra Gaur v. State of Haryana, (1995) 2 SCC 577 (paras 6-7)

5. Rajiv Mohan Mishra v. City & Industrial Development Corporation of Maharashtra Ltd., 2018 SCC OnLine Bom 413 (paras 48, 77, 78 and 84)
6. Friends Colony Development Committee v. State of Orissa (2004) 8 SCC 733 (para 22)
7. Chairman Indore Vikas Pradhikaran v. Pure Industrial Coke & Chemicals Ltd. & Ors., (2007) 8 SCC 705 (para 45)
8. Sudhir M Khanwala v. Mumbai Municipal Corporation & Ors. 2010 (2) Mh.L.J. 759 (paras 121-123)
9. Bangalore Medical Trust v. B S Mudappa, (1991) 4 SCC 54 (para 16)

10. R K Mittal v. State of U.P., (2012) 2 SCC 232 (paras 38, 40, 42-44, 46 and 47-49)

11. C.I.T v. J. H. Gotla, 1985 (4) SCC 343 (para 46)

12. Manoj Narula v. Union of India, (2014) 9 SCC 1 (para 82)

13. Global Energy Ltd. v. Central electricity Regulatory Commission, (2009) 15 SCC 570 (para 71)

14. Hanuman Laxman Aroskar v. Union of India, (2019) 15 SCC 401

15. Secretary, Ministry of Information and Broadcasting v. Cricket Association of Bengal, (1995) 2 SCC 161

16. Cellular Operators Association of India v. TRAI, (2016) 7 SCC 703 (para 92)

17. Shayara Bano v. Union of India, (2017) 9 SCC 1 (para 101)

18. Binoy Viswam v. Union of India, (2017) 7 SCC 59 (para 83)

19. Deena v. Union of India, (1983) 4 SCC 645 (para 17)

20. K S Puttaswamy v. Union of India, (2017) 10 SCC 1 (paras 291-295)

21. Indian Express Newspapers (Bombay) Private Ltd. and Ors. v. Union of India (1985) SCC 1 641 (para 75)

22.Ganpati Singhji v. State of Ajmer, (1954) 2 SC 819 (para 10)

23.Marathwada University v. Seshrao Balwant Rao Chavan, (1989) 3 SCC 132 (para 20)

(B) Mr. Jayant Mulgaonkar, learned Advocate representing the petitioners in a connected petition, advanced the following submissions :

i. The State, by the impugned Amendment, has introduced an arbitrary power to permit spot zoning, bypassing the entire public consultative process. This amounts to colourable exercise of power for the benefit of applicants/property owners.

ii. The horizon year of the current RP being 2021, a fresh RP is overdue. The TCP Act, 1974 requires a RP to be updated every few years. The state has conducted mapping exercises to identify eco-sensitive areas, including water catchment areas and designated private forests, yet this information is not reflected in the existing RP-2021. Consequently, current town planning maps and zoning certificates lack critical details about wetlands, buffer zones, and other eco-sensitive designations, despite the comprehensive mapping efforts by state authorities.

iii. The Savle Lake has been wrongly denoted as a "pond" under RP-2021 despite being classified as a significant spot having biodiversity value by the Department of Environment and Climate Change vide notification dated 09.12.2021. However, change of zone from "zone of influence" or "buffer zone" to

"settlement zone" is being sought under Section 17(2) and Rules made thereunder in respect of properties demarcated as such under RP-2021.

iv. Granting such zone changes would result in the destruction of the ecologically sensitive area surrounding the lake. Authorities have highlighted the ecological significance of the lake by installing informative boards and referencing a report from the Goa State Wetland Authority. Despite the preparation of eleven Taluka level maps by the Water Resources Department that outline water catchment areas, the town planning department has not incorporated these water bodies into town planning maps. As a result, these areas are at risk of destruction due to illegal development activities.

v. A significant area of 86,418 square meters in the area of Village Panchayat, Pilerne-Marra is at risk of illegal zoning changes under section 17 (2), which is disproportionate to the anticipated population growth and lacks official data to justify such demand for settlement properties, especially since the village has unutilized settlement areas. In total, 16,58,577 square meters across Goa may face similar changes, with no contestation from authorities. Property owners have begun illegal tree cutting in anticipation of these changes, prompting complaints from the petitioner. Additionally, many properties converted in the village are on No Development Slopes, and the zone changes occurred without proper slope analysis reports.

vi. The resolution passed by the Village Panchayat of Pilerne and Marra on 29.02.2024 to not permit zone change and not grant any construction license for such properties was disregarded. Any zone change granted despite this resolution violates the 73rd and 74th Amendments of the Constitution.

vii. In addition to completely side-stepping the consultative process outlined in the Town and Country Planning Act 1974, Section 17(2) considers spot zoning in isolation from social realities and lacks any data to justify such changes. These zoning alterations, which are disconnected from actual circumstances, can only be described as speculative and are therefore manifestly arbitrary.

viii. Section 17(2) has the effect of vesting in the Government and the CTP an unbridled power and unguided discretion to carry out alterations and modifications in the RP.

ix. The Guidelines issued in the Circular dated 27.03.2023 contain vague definitions for terms like "inconsistent", "incoherent" and "inadvertent" particularly regarding "past commitments" which lack clarity on their authority and implications. The Guidelines also allow for arbitrary changes to zoning, such as converting designated playgrounds or open spaces and altering green areas to settlement zones without proper analysis or justification. Additionally, the phrase "wrong depiction of right of way roads" is criticized for its potential misuse due to the absence of a comprehensive road map. As such Section 17(2), Rules 2023 and the Guidelines issued

thereunder suffer from the vice of manifest arbitrariness and vagueness.

x. Mr Mulgaonkar therefore submitted that it is in the interest of justice that the proposed zone changes be stayed by way of an interim order until this petition is finally decided.

xi. To substantiate his submissions, learned Counsel, Mr. Mulgaonkar relies on the following precedents:

1. Jitendra Singh v. Ministry of Environment & Ors., (2020) 20 SCC 581 (para 21)
2. Shayara Bano v. Union of India & Ors., (2017) 9 SCC 1 (paras 100, 101 and 102)
3. M K Ranjitsinh and Others v. Union of India & Ors. 2024 SCC OnLine SC 570 (paras 12, 22, 23, 24 and 25)
4. Karnataka Industrial Areas Development Board v. C. Kenchappa, 2006 6 SCC 371 (paras 51, 83 and 87)
5. Hinch Lal Tiwari v. Kamala Devi and Others (2001) 6 SCC 496 (para 13)

(C) Mr. Nigel Da Costa Frias, learned Counsel representing the petitioners in one of the petitions adopted the submissions of Ms Norma Alvares, learned Senior Advocate. In addition he advanced the following submission:

i. Section 17(2) confers an unbridled, unfettered power on the government to alter/modify the RP under the guise of correcting inconsistent /incoherent zoning proposals and inadvertent errors, without adhering to the procedure prescribed under sections 11 to 14 and 17 of the TCP Act, 1974.

ii. Section 17(2) which does away with public consultation and permits piecemeal changes in the RP without any limit on the extent of such change and is thus, in violation of Article 14 of the Constitution being discriminatory and manifestly arbitrary. Inadvertent errors in the RP which could include inconsistent or incoherent zoning proposals, if any, could be rectified under the scheme of Section 17(1) which envisages a procedural safeguard, where, prior to undertaking revision of the RP, the foregoing provisions of the TCP Act relating to the preparation of RP would apply. This would ensure public participation and transparency in governance, which is essential for two reasons: (i) all stakeholders which include members of the public, local bodies such as Panchayats, Municipalities, Institutions which own large tracts of lands such as the Communidades would have the right to file their objections/comments with regards to the proposed revision. (ii) the likelihood of there being any arbitrary change made keeping the citizens in the dark and to suit private/ vested interests is reduced, making the process more transparent.

iii. The open- ended operation of Section 17(2) and the powers conferred therein exercisable at any point of time in the future is itself discriminatory and manifestly arbitrary, thus, violative of Article 14 of the Constitution. Section 17 (2) does not prescribe any time limit for making an application for correction/modification of the RP. Given that RP-2021 has been in operation for more than a decade, any inadvertent errors

which were apparent and capable of correction ought to have been corrected by resorting to the provision of Section 17 (1).

iv. Section 17(2) is arbitrary, discriminatory and in violation of Articles 14 and 21 of the Constitution of India as it defeats the very principle of planned development for which the RP-2021 was systematically and scientifically prepared. Release three of the RP-2021 outlines the plan review process, stating that the review of the RP-2021 will adhere to the TCP Act, 1974, with local bodies being consulted. Initially proposed to have varying review intervals, the process was proposed to be standardized to a limited review every five years following the final notification of RP-2021.

v. Section 17(2) is unconstitutionally vague in as much as what would constitute inadvertent errors and inconsistent/incoherent zoning proposals etc., is not defined under the Act. The Guidelines, issued by means of a circular dated 27.02.2023, define the aforementioned terms which indicates that Section 17 (2) is vague, open to diverse construction, wanton abuse, capable of an arbitrary, discriminatory and malafide interpretation which would defeat the purpose of enacting the TCP Act, 1974 itself and more particularly the provisions relating to the preparation and notification of the RP.

vi. Permitting the RP to be tinkered with under the garb of correcting inadvertent errors or inconsistent/ incoherent zoning proposals under Section 17 (2) will not only defeat the whole purpose of planned development but will render the RP-2021

redundant and reduce it to a document which is capable of manipulation at the whim and fancy of private individuals, violating Section 14 and 21 read with Article 48A of the Constitution. The Task Force has followed a comprehensive and scientific method in preparation of the RP which has been transparent, and in tune with the constitutional provisions. Section 17(2) will have the effect of negating the laudable and tireless work undertaken by the Task Force over the course of one year.

vii. Section 17(2) is unconstitutional, being contrary to the 73rd and 74th Constitutional Amendments. The 73rd and 74th Amendments to the Indian Constitution aim to enhance local self-governance at the village and district levels by empowering local bodies like Gram Panchayats and Municipalities. However, Section 17 (2) lacks provisions for consulting these local bodies, which possess crucial knowledge about their areas, including ecological and agricultural needs. Therefore, it is essential to involve local bodies in decision-making processes, especially when significant changes to RPs are proposed, to ensure that their insights and requirements are considered.

viii. Mr. Nigel da Costa Frias, learned Counsel relied on the following judgments to substantiate his submissions:

1. Rajendra Shankar Shukla and others V. State of Chhattisgarh & Ors., (2015) 10 SCC 400, (paras 8-26)
2. Shreya Singhal v. Union of India, (2015) 5 SCC 1, (paras 67-72)

(D) Mr. Laban Carvalho, learned Counsel representing the intervenor in support of the petitioner has submitted as under:-

i. Section 17(2) is contrary to the principle of planned development which is the fundamental basis of the TCP Act. It is contrary to the concept of Sustainable Development as sustainable development cannot be achieved with pinpointed change of zones initiated by private applications as such changes are motivated by vested interest. Public participation and participation of local bodies is necessary.

ii. Section 17(2) is arbitrary as it provides *carte blanc* powers in the hands of a certain stratum of society, to rectify the existing RP without following the procedure laid in Chapter III of the TCP Act under the guise of an inadvertent error and for the correction of inconsistent/ incoherent zoning proposal in RP. These actions are labelled as modification/alterations upon paying fees by the respective parties. The functioning of Section 17(2) entertains applications for change to a zone of choice for a fee.

iii. The Scrutiny Committee has been given importance over the original makers of the RP-2021.

iv. Section 17(2) guarantees rampant pinpointed revisions of the RP without a detailed consideration by the Government or the public at large.

v. Section 17(2) allows for disruption of an ecology at the whims of private individuals thereby violating fundamental right under Article 21 pertaining to the environment.

vi. Section 17(2), in function and its implementation, directly contradicts the spirit and scheme of the TCP Act as there is no longer planned development carried out by entertaining application by private individuals. The said provision guarantees haphazard development.

vii. Section 17(2) does not provide for public consultation. Any error must be rectified by the Government after consultation with public and not on application and payment of fees by private persons who have vested interest in the land.

viii. Mr. Laban Carvalho, learned Advocate relied on the following precedents to support his submissions:

1. State of Tamil Nadu & Ors v. K. Shyam Sunder and Ors., (2011) 8 SCC 737, (paras 36, 40, 46, 49, 50 and 54)
2. Lal Bahadur v. State of Uttar Pradesh and Ors., (2018) 15 SCC 407 (paras 12, 14, 18, 19, 22 and 23)
3. Pragnesh Shah v. Dr. Arun Kumar Sharma and Ors., (2022) 11 SCC 493 (paras 29, 30, 21, 32, 33 and 34)

(E) Ms Gayatri Singh, learned Senior Advocate, made the following submissions on behalf of the intervenor in Misc. Civil Application No.2695/2024 in support of the petitioner:

i. Section 17(2) of the Act is contrary to the mandatory provisions of the TCP Act, 1974 and dilutes the provisions

relating to preparation and revision of RPs. Planned development is the *sine qua non* of a RP as seen from Sections 9 to 15 of the TCP Act, 1974, wherein a detailed procedure is set out for preparation of the RP.

ii. The 2023 Amendment Act, introducing Section 17(2) to the scheme of the TCP Act, 1974, is ultra vires the Act and the provisions of the Constitution of India. The amendment has been introduced for extraneous reasons for promoting "tourism" and for "ease of doing business". The amendment is in colourable exercise of power, as the true object of the amendment is to reach an end different from the one for which the power is entrusted.

iii. In the present case, *mala fide* is apparent on the face of the pleadings and that there is irrefutable proof (extracts of the legislative file). In particular, it is submitted that the amendment was initiated by the TCP Minister stating that it was for furtherance of tourism, development, economic and environmental policies of the State. The said purpose of the amendment was maintained in the subsequent file notings, the Note for the Cabinet, the Draft Bill, and the decision taken in the XVth Cabinet Meeting of the Council of Ministers held on 11.01.2023. The Note for the Cabinet further states under para 3 and para 5 that increased tourism activities and rapid pace of development of physical and social infrastructure, New Mopa Airport and other developments require this amendment to adjust/ alter/ modify the RP. The submissions of the Applicant

prove not only the mala fide intentions to forsake planned development for tourism and other constructions, but also prove the concealment of the real motive by irregular and post facto amendments to the Bill and the decision of the Cabinet in order to mislead everyone, including this Hon'ble Court.

iv. Sections 10 and 11 restrict the powers of the CTP to outlining "broad demarcations". Despite restricting the CTP's powers to outlining broad demarcations, the amendment gives wide-sweeping power to the CTP and the Government. Delegation of power cannot be wide, uncanalized, or unguided. Section 17 (2) proposes to carry out alteration/ modification to the RP based solely on vague terms like "inadvertent error" and/or "inconsistent/incoherent" zoning proposals and gives wide sweeping powers to the CTP to carry out such alterations/modifications. No definition is given of these terms.

v. There is a manifest ascendance of rights under the Constitution which paves the way for the doctrine of progressive realization of rights. This doctrine gives birth to the doctrine of non-regression.

vi. The impugned amendment attempts to further destroy natural resources without any consideration for ensuring intergenerational equity by reserving, protecting, and conserving lands which is in gross violation of their Right to Life guaranteed under Article 21. Section 17(2) permits unlimited changes in zones based solely on individual applications. This open-ended provision is likely to favour private profits over

sustainable practices, undermining the very essence of planned development.

vii. Section 17(2) of the TCP Act is deemed discriminatory and in violation of Article 14 of the Indian Constitution, as it allows individuals to change land zones in a manner that unfairly differentiates them from others with similar properties, leading to arbitrary treatment, as it permits zoning changes without a rational basis or intelligible criteria, undermining the principle of equality.

viii. Section 17 (2) blatantly discriminates in favour of those who are powerful and resourceful and against those who are oppressed or resourceless, which is violative of Article 14 of the Indian Constitution.

ix. The impugned section smacks of manifest arbitrariness as the amendment seeks to act contrary to the purpose and objective of the TCP Act by allowing changes to the RP without complying with the provisions of the Act, without public participation, and by arbitrarily changing zones/demarcations by giving wide sweeping powers to the CTP.

x. Section 17(2) breaches Articles 243G, 243W, 243ZD, and 243ZE and the Goa Panchayat Raj Act of 1994 and the Goa Municipalities Act, 1968, as it precludes local Panchayats and Municipalities from regulating change of zoning demarcations. Therefore, Section 17(2) of the TCP Act, the 2023 Rules, and the Circular dated 27.03.2023, by precluding the local Panchayats

and municipalities from participating in the process of town planning and demarcation of zones, violate the 73rd and 74th Amendments to the Constitution.

xi. Plain reading of Section 17 (2) shows that the rules and Guidelines are to be prescribed to limit "the manner" and "the extent" to which the alteration/modification is to be carried out. Rules 3 and the rules and Guidelines which do not prescribe "the manner" and "the extent" to which the alteration/modification is to be carried out are ultra vires the Act, as the delegated powers are limited to providing "the manner" and "the extent" to which the alteration/modification is to be carried out.

xii. It is evident that excessive power has been delegated to the CTP through the 2023 Rules, even though the power to grant zone changes based on individual requests should never have been vested in any authority. Rule 3 of the 2023 Rules, however, allows the CTP to scrutinise even those rectifications/corrections which are requested by individuals, effectively equating these individual/private requests with government-directed changes to the RP, thus contradicting the scheme of the Act.

xiii. The term "past commitments" under guideline 2 is being used to revert lands demarcated as green areas in RP-2021 back to settlements if they were marked as settlements in RP-2001. Guideline 2 explains "inconsistent / incoherent zoning proposals", which include mismatches between the old plan and the new plan (i.e., RP-2001 and RP-2021), along with various other categories and past commitments. According to this

guideline, if prior permissions were granted on the basis of RP-2001, those permissions would hold even if, under RP-2021, those lands are no longer classified as settlements.

xiv. The Guidelines issued through the Circular dated 27.03.2023 confer unchecked authority on the CTP/Expert Committee, allowing for the acceptance of individual applications and granting discretionary powers not envisaged by the Act itself.

xv. Ms. Gayatri Singh, learned Senior Advocate relies on the following precedents to substantiate her submissions:

1. Padma v. Hiralal Motilal Desarda, (2002) 7 SCC 564 (paras 31, 33 & 34)

2. R K Mittal v. State of U.P., (2002) 2 SCC 232 (paras 26, 30, 33 and 34)

3. State of Tamil Nadu and Ors v. K. Shyam Sunder, (2011) 8 SCC 737 (paras 36, 41, 44, 48, 49, 46, 66 and 67)

4. Lal Bahadur v. State of U.P., (2018) 15 SCC 407, (para 25)

5. Shayara Bano v. Union of India, (2017) 9 SCC 1 (para 101)

6. Rajendra Shankar Shukla v. State of Chhattisgarh, (2015) 10 SCC 400 (paras nos. 9, 20, 50, 51, 52, 56, 58, 62, 65, 74 and 76)

7. Dr. Ashish Kumar Sinha and Ors v. Union of India and Ors, 2022 SCC OnLine Pat 3472, (paras 16, 17, 18, 21, 22, 24, 53, 56, 71-79, 81, 83, 84 and 86)

8. Union of India & Ors v. S. Srinivasan, (2012) 7 SCC 683, (paras 21 and 32)

9. Assam Co. Ltd & Another v. State of Assam and Others, (2001) 4 SCC 202 (paras 10, 11 and 13)

(F) Mr. Fredun Devitre, learned Senior Advocate representing the Government of Goa advanced the following submissions:

i. Court ought to approach the challenges to Section 17(2) in the light of the following two basic propositions of constitutional law (i) that there is a presumption of the constitutionality of a statute; by reason of such presumption, the approach of a Court is that it will try to uphold the impugned legislation. (ii) that an apprehension of misuse of a statutory provision is not a ground to test its constitutional validity.

ii. Section 17(2) is a corrective or remedial provision, intended to operate during the lifetime of an existing RP until it is revised under section 17(1) of the TCP Act. Powers under Section 17(2) can be exercised when the State is of the opinion that it is necessary to rectify inadvertent errors or inconsistent or incoherent zoning proposals. In addition to Section 17(2), the 2023 Rules and Guidelines framed thereunder also prescribe the limits within which the power can be exercised.

iii. The petitioners' challenge to Section 17(2) is on the ground that the legislation infringes the petitioners' fundamental rights (Articles 14 and 21) and is 'manifestly arbitrary'.

iv. Improper exercise of power by the State or its 'misuse' does not affect the validity of the statute permitting the exercise of power. The manner in which a piece of legislation is implemented

or applied cannot be a ground to challenge the vires of the legislation. Enactment of a legislation is a legislative function; implementation of the legislation is an executive function.

v. Section 17 (2) begins with a non-obstante clause, "Notwithstanding anything contained in sub-section (1)…", clearly expressing the legislative intent to depart from the provisions of Section 17(1) which provides for "Revision of Regional Plan", giving an overriding effect to the section, even if it is contrary to the existing provision. This negates the argument of the petitioners that Section 17 (2) of the TCP Act read with the 2023 Rules should be struck down because it enables the destruction of the basic character of the RP 2021 and spells the doom for planned development in Goa, thereby infringing Article 21 of the Constitution of India.

vi. Section 17(2) expressly provides that the manner in which, and the extent to which, the alteration/modification is to be made will be "as prescribed" viz as prescribed by the Rules made under the Act. The authority to make Rules is found in Section 17(2) of the Act itself, apart from the authority to do so under Section 140 of the Act, particularly sections 140(1) and 140(2)(y).

vii. The absence of definitions for the terms "necessary," "inadvertent error," "incoherent," and "inconsistent" in the Section does not render it arbitrary or vague. Section 17(2) employs words of known legal import that should be interpreted in the context of the section to ensure its full effect. Section

17(2) outlines the limited circumstances under which the State can exercise its authority, pertaining to "minor modifications" to the RP that do not alter its character.

viii. The Petitioners accept that the expressions “alteration” and “modification” used in Section 17(2) mean narrow, specific changes, adjustments to particular elements, leaving the core structure intact, viz minor modifications, in counter-distinction to the expression “revision” used in Section 17(1) which envisages major changes, including a broad, comprehensive re-evaluation involving a systematic overhaul.

ix. The petitioners’ contention that introduction of Section 17(2) in the Act has destroyed the very concept of planned development in Goa is not borne out from the facts. Up to 2nd January 2025, there have been 353 approvals by the State. These affect an area of about 26,54,286 square metres i.e., 0.0723% of the total area covered by RP-2021 and about 0.087 % of the 304,93, 86000 square metres of the Eco Sensitive areas. The 353 approvals granted for rectification of zone as of 02-01-2025 (including the 24 cases impugned in the Petition) affect 9 (of 12) Talukas. These result in changes ranging between 0.01% to 0.35% of the total areas of the 9 Talukas.

x. These amount to miniscule, minor alterations/modifications under section 17(2) to RP 2021 zoning, retaining its basic character of protecting eco-sensitive zones, whilst undertaking a balancing exercise of diverse interests.

xi. The circumstance that further approvals for correction of zone will be notified in future is not a ground to invalidate Section 17(2). The Section and the legal and valid exercise of power thereunder by the State cannot be invalidated on the basis of supposed, potential or apprehended misuse of the power under the Section.

xii. Section 17(2) is essentially a balancing exercise undertaken by the State, to strike a balance between the interests of general public and the class of land-holders in Goa. In the present case, the public interest of maintaining the eco-sensitive areas in Goa can be harmonised with the public interest of correcting errors or inconsistent or incoherent planning proposals. In attempting to balance the diverse interests the State has not acted unconstitutionally or arbitrarily.

xiii. In this respect, the challenge to the constitutional validity of Section 17(2) involves attributing malafides to the Legislature of the State of Goa. This is impermissible.

xiv. It is unreasonable to claim that non- revision of RP imposes a bar on the State from making alterations/modifications for the purposes set out in Section 17(2). This is particularly so because section 17(2) is added to the Act itself and is a part of the statute. It would apply to any future Revised RP also, whether before or after the expiry of that Revised RP's horizon year. There is no co-relation between the power conferred to correct zoning proposals in section 17(2) and the expiry or otherwise of the RP which may be in force at the time.

xv. Section 17(2) of the Act is not constitutionally invalid because it provides only for post-modification/post-alteration notification of the changes, without first inviting comments from the public. Every State legislative body has the power and authority to define the extent of the public participation and the stage at which public comments may be invited. The TCP Act recognizes that prior notification of changes and inviting public comments is not mandatory in all cases of changes in plans. It is legislatively permissible to provide for post-change notification in a limited category of cases.

xvi. At the 188th Meeting of the TCP Board held on 15 April 2023, the Board decided to form a Sub-Committee consisting of members of the Board and other professionals to scrutinize the proposals under Section 17(2). The Member-Secretary of the Board was directed to issue the Order/Notification in this regard. In terms of the said direction, the CTP and ex-Officio Joint Secretary issued the Notification dated 24 May 2023 published in the Official Gazette of the Government of Goa dated 25 May 2023 by and in the name of the Governor. By the said Notification, the formation of the Expert Committee and its constitution was notified.

xvii. Even assuming that the Expert Committee was not a sub-committee of the Board but a separate body constituted by the Government, its formation ought to be looked upon as an additional safeguard provided by the State in the matter of implementing section 17(2). The suggestion that the other

members of the Committee are not independent or would merely toe the line of the Chairman, ought not to be accepted.

xviii. There was no such challenge posed to the Board's constituting a Task Force for the purpose of preparing RP-2021 or to the appointment of a State Level Committee ("SLC") to consider comments received, make recommendations and submit the RP-2021 to the Government for its approval.

xix. The petitioners' contention that the Government delegated its decision-making power to the CTP under the 2023 Rules is incorrect. Under section 17 (2) of the Act, it is the Government which has to form its opinion in regard to the necessity for alteration/modification to the RP. Rule 3 is the stage of scrutiny and analysis of the applications received for rectification of the zone. The applications are to be made to the CTP [under Rule 3(3)]. The CTP scrutinises the Applications and submits a report to the Government for its decision.

xx. The carrying out of the alteration or modification as per the decision of the Government (by notification in the Official Gazette under Rule 6) is a ministerial act. At that stage, viz after the Government decision under Rule 3(2), the TCP does not perform any function other than notifying the alteration/modification in the Official Gazette. The petitioners' argument in this regard is based on a misreading of the Rules.

xxi. It is incorrect that the 2023 Rules are ultra vires and *de hors* section 17(2) of the Principal Act, because they provide for

applications by any person for changes in the RP while Section 17(2) of the TCP Act empowers only the Government to make alterations/modifications in the RP, if it is of the opinion that the alteration/modification is necessary in the circumstances stated therein.

xxii. The power to recover fees from applicants applying for change of Zone in the Regional (and other) Plans is clearly provided for in the TCP Act. Section 100A and 101A were introduced into the Act by an amendment as far back as in 2001. The said provisions have been operative for the past 24 years, without a challenge. The charging of fees is a matter of policy for the State legislature to decide. it is reasonable that the law provides for charging of fees, as such a provision is necessary inter alia to discourage frivolous and undeserving applications for correction of Zone.

xxiii. Mr. Devitre, learned Senior Advocate relies on the following precedents to support his submissions:

1. Union of India v. G.M. Kokil, (1984) Supp SCC 196 (para 11)

2. Sri Marcel Martins v. M. Printer & Ors., (2012) 5 SCC 342 (para 31)

3. Rajni Kumar v. Suresh Kumar Malhotra, (2003) 5 SCC 315 (para 9)

4. Vinodchandra Sarkarlal v. State of Gujarat, (2020) 18 SCC 144

5. Bombay Dyeing v. BEAG & Ors., (2006) 3 SCC 434 (para. 214)

6. Chairman Indore Vikas Pradhikaran v. Pure Industrial Coke and Chemical Ltd. & Ors., (2007) 8 SCC 705, (paras 43, 45, 46, 48, 53 and 56)

8. Omprakash v. State of U.P., (2004) 3 SCC 402, (paras 206, 210, 211 and 213)

9. Manish Kumar v. Union of India, (2021) 5 SCC 1, (paras 62, 63 and 64)

10. K. Nagaraj v. State of A.P., (1985) 1 SCC 523, (para 36)

11. Pune Municipal Corporation v. Promoters and Builders Association, (2004) 10 SCC 796, (para 5)

12. T.N. v. K. Shyam Sunder, (2011) 8 SCC 737, (paras 36 and 37)

(G) Shri. Sharan Jagtiani, learned Senior Advocate representing the Town and Country Planning Board, has submitted as under:

i. A challenge to the constitutionality of a provision can only be made on grounds of lack of legislative competence or violation of Part III of the Constitution of India. The test of reasonableness is one of the significant tests that has been invariably applied whilst evaluating a challenge to the constitutionality of a provision. Whilst applying the test of reasonableness, the Court may consider that this test cannot be applied in abstraction. A general pattern cannot be conceived to be made applicable to all cases because it will depend upon the nature of the right infringed or violated and the underlying purpose of the provision. The evil thought to be remedied and the prevailing conditions of

the time are to be kept in view while judging proportionality of the restriction. These are the factors that the Court has to consider whilst evaluating a challenge to the amendments to Section 17 of the TCP Act.

ii. The vires of an amended statutory provision has to be considered by keeping in mind the purpose of the principal Act and its nexus with the objective of the principal Act and the subject amendment. Section 17(2) as introduced by way of amendment is intra vires being a provision that is rational and reasonable with an obvious nexus to the object and purpose of the TCP Act. The scope is circumscribed by the plain language of the provision and because it operates within these identified restricted parameters its implementation does not require the same process to be followed when exercising wider and more expansive powers under other provisions of the TCP Act.

iii. The provisions of the TCP Act, such as Section 2(10) that defines development, Section 9 which pertains to the preparation of RPs upon a direction by the government to the CTP, Section 10 pertaining to the preparation of RPs, Section 11 regarding the contents of RPs and Section 16A provides that no person shall undertake any work of development in contravention of the RP as in force, are intrinsic evidence within the TCP Act that establishes the necessity for such a provision that confers a power for rectifying inadvertent errors and for correcting incoherent and inconsistent zoning proposals in the RP without public participation.

iv. Section 17(2) of the TCP Act introduced by way of amendment is entirely consistent with the Act and has a clear nexus with its purpose as also with the very subject of the amendment that was intended to deal with a situation arising from inadvertent errors or incoherent and inconsistent zoning in a RP. It serves a legitimate purpose of correcting apparent errors that may have crept into the RP on the basis of which the entire development of the State is planned. In fact, the absence of such provision may lead to continuance of errors which would in effect continue the mis-categorization of the land which would in turn lead to haphazard development.

v. Although the term 'inadvertent error' is not defined, that may not by itself make the provision amenable to challenge. The ordinary meaning of the term must be understood in the context of the purpose of the Act.

vi. A bare reading of Section 17(2) reveals it operates in the limited field of "rectifying inadvertent errors" or "correction of "inconsistent/incoherent zoning". In such a circumscribed sphere of operation, the entire rigour of the procedure to be followed in Sections 12 to 16 of the TCP Act for revision of the RP need not be followed.

vii. The revision contemplated under Section 17(1) may be a revision to the RP of any kind, including change of zone due to changing needs of the area. Such change is not based on an error or incoherent zoning, but reflective of a change of decision or policy. In such situations, the TCP Act contemplates a public

hearing process, thus taking into account the opinion of all stakeholders who may be affected due to the change in zone. In contrast, the specific situations contemplated under Section 17(2) read with the 2023 Rules and Circular/Guidelines framed thereunder, do not attract or even require public opinion, since they operate in a very narrow sphere and only seek to rectify inadvertent errors and incoherent zoning. Thus, the insistence of the petitioners to read the mandatory procedure under Section 17(1) into Section 17 (2) has no basis and ought to be rejected.

viii. Section 17(2) read with the 2023 Rules and the Circular/Guidelines in no way confers unfettered powers on the government bodies, but rather circumscribes it by using specific, narrow language. Section 17(2) balances the interests of various stakeholders and competing interests. In the present case, the interests of owners whose lands are incorrectly categorized due to the possibility of obvious/inadvertent errors must also be considered.

ix. Section 17(2) provides an opportunity to the owners to correct inadvertent errors that may have occurred. It no way contemplates conversion simpliciter of a particular land from its previous user. It merely seeks to correct factual inconsistencies/errors.

x. Merely by making a provision for rectification of inadvertent errors, it cannot be said that the RP would be undergoing a 'fundamental change' which would alter the landscape of the

entire State or lead to chaotic development. A change pursuant to Section 17(2) is to a plot of land which has been incorrectly or inadvertently zoned. There is no question of a change in the "character" of the RP.

xi. Section 17(2) has to be appreciated from the viewpoint that a RP is for the entire state and there are bound to be mistakes and errors or incoherent zoning in such a mammoth task undertaken by the Government. A provision to correct such mistakes and inconsistencies is thus necessary and expedient.

xii. The purpose of Section 17(2) which is to provide for a process of making modifications to the RP, is a valid purpose within the realm of planning laws and the process of urban planning. It is a balanced provision to reconcile the competing interests of environmental and ecological objectives on the one hand with the objective of planning and zoning on the other, such that it does not unduly affect and negate individual ownership rights.

xiii. Merely because a public hearing is not contemplated under Section 17(2), that ipso facto does not make the provision arbitrary. Changes that can be made are only minor, without at all affecting the character of the RP. Hence public participation is not needed.

xiv. The Rules provide a road map and specificity in relation to the manner in which the power under Section 17(2) can be exercised. The Circular/Guidelines further circumscribes the

manner in which the term 'incoherent zoning' and 'inadvertent errors' must be interpreted. This can never be considered as arbitrary since there is a direct nexus between the parent legislation and the 2023 Rules or the Circular/Guidelines. If anything, these 2023 Rules and Circular/Guidelines provide safeguards against abuse of the power granted under Section 17(2).

xv. Rules which are framed under the TCP Act, merely flesh out and give meaning to Section 17(2). They lend detail and give meaning to a statutory provision. No part of the Rules violates or derogates from Section 17(2).

xvi. The source of power for making the Rules under the TCP Act is clear. It is evidently traceable to Section 17(2) of the TCP Act itself, which speaks of carrying out "such alteration/modification to the regional plan in such manner and only to such extent as prescribed". Prescribed is defined in Section 2(26) to mean as "prescribed by rules made under this Act". Further, Section 140 of the TCP Act discusses the power to make rules, with Section 140(k) and 140(y) being apposite in the context of the present facts.

xvii. Rules further or effectuate the object of Section 17(2), and by their very nature, function as a safeguard in the decision making process. They empower the CTP to consult other departments of the government/local authorities or such other authority as the CTP deems necessary. These too operate as safeguards and are matters typically provided for in a delegated

legislation; in this case, to lend detail to the process of exercise of power under Section 17(2) by the State Government. Notably, and evidently, the final decision under Section 17(2) is to be taken by the State Government and that does not change at all by virtue of the Rules.

xviii. Rules and Circulars form a part of delegated legislation. A challenge to the delegated legislation can only be sustained when such legislation is ex-facie beyond the scope of the Act or is ex facie or manifestly arbitrary.

xix. There is no explanation offered as to how by excluding the advisory role/scrutiny of the TCP Board in a given situation would render Section 17(2) of the TCP Act ultra vires either Article 21 or Article 14. Section 17(2) is not manifestly arbitrary merely because it excluded the TCP Board thus eliminating one of the checks and balances on the exercise of power and instead vests such power in Scrutiny Committee.

xx. Section 17(2) operates in a specific and narrow context which in itself circumscribes the nature of the power and discretion. All provisions in the TCP Act conferring powers, which powers are ex facie different and operate in different spheres with different consequences, cannot be equated with each other to support the argument that: because the TCP Board acts in an advisory capacity qua the exercise of some powers under the TCP Act, it must so act or be involved in an advisory/recommendatory capacity qua the exercise of other dissimilar powers under the TCP Act.

xxi. The advisory role of the TCP Board as broadly contemplated under Section 8 of the TCP Act cannot be conflated with the specifics of the process of scrutinizing and recommending individual applications made under Section 17(2) read with Rule 3. Further, there are other provisions of the TCP Act, which contemplate the CTP as an individual functionary and not as a part of the TCP Board.

xxii. There are narrower powers under Section 39(3) of the TCP Act for correcting typographical and cartographical errors in regional plans/development plans exercisable by the State Government, which do not contemplate the involvement of the TCP Board at all but involve, again, the CTP as an individual functionary.

xxiii. The formation of the Scrutiny Committee with the CTP as its Chairman to act as the expert committee for the purposes of scrutiny, verification and recommendation of proposals is not inconsistent with the TCP Act or the Rules, but in furtherance of them and does not constitute any excessive or uncanalized delegation of powers upon such committee. There is no infirmity whatsoever in the formation of the Scrutiny Committee/expert committee or the role that it plays in the overall scheme of Section 17(2).

xxiv. Rule 4(f) of the 2023 Rules enables the CTP to consult such other authority as it deems necessary in relation to applications for rectification of inadvertent errors and correction of inconsistent/incoherent zoning. The Scrutiny Committee/expert

committee is not some ad-hoc or casual body. It therefore meets the description of 'authority' under Rule 4(f).

xxv. Scrutiny Committee/expert committee acts as a further check and balance in the overall scheme of the decision making process and on the face of it has a balance of diverse interests and expertise that would be relevant for scrutinizing applications. It would be a misnomer to describe it as a delegate because no power of the State Government has been delegated to it.

xxvi. The 2010 Regulations were promulgated in the year 2010 and thus, definition of Zone in Section 2 (149) has been effective since the year 2010. The context in which the term 'zone' appears in the 2010 Regulations would clearly indicate that it is relatable to the user of the plot of land. More particularly, the zoning classification as referred to in the Regulations such as residential, commercial, industrial etc. indicates that it is relatable to the user of that land and hence in consonance with the definition under Regulation Section 2(149).

xxvii. The definition of the term 'zone' is appropriate when seen contextually and the manner in which it is used in Regulation 6.1.1 (d) since in the situations when the aggrieved parties apply for development permissions seeking change of zone, it is with reference to the 'zone' as understood in Regulation 2(149) i.e. user of the land. Thus, the definition / meaning propounded by the petitioners may not be the only correct definition of the term 'zone'.

xxviii. Regulation 6.1.1 (d) shows that the concept of zone pertains to smaller areas and that the 2010 Regulations themselves permit an application for change in zone for development in zones either not marked, or marked for specific use. Carrying out construction by change in user of land was always permissible under the Regulations. This is because the same in no manner affected the nature / character of the plan itself.

xxix. Section 19(2)(ii), Section 20 (3)(iii), Section 20 (5), (6), (7), Section 26 proviso, and Section 29 of the TCP Act are provisions regarding the involvement of and consultation with local authorities which, by definition in Section 2(18), include a Village Panchayat in specific circumstances relating to the planning process.

xxx. The reliance on Section 67 of the Panchayat Act is misplaced. That section relates to the erection of buildings, not to the making of RPs or development plans. That section has no application in the present case relating to the vires of Section 17(2).

xxxi. Mr. Sharan Jagtiani, learned Senior Advocate, relied on the following precedents to substantiate his submissions:

1. RK Garg v. Union of India, (1981) 4 SCC 675, (paras 7, 8 and 19)

2. Bombay Dyeing & Ors v. BEAG & Ors, (2006) 3 SCC 434, (paras 99, 198, 205, 206, 210, 214, 249 and 277)

3. GB Mahajan v. Jalgaon Municipal Corporation, (1991) 3 SCC 91, (paras 22, 23 and 26)

4. Jayant Achyut Sathe v. Joseph Bain D'Souza & Ors, (2008) 13 SCC 547 (para 121)

5. Noel Harper and Ors. v. Union of India & Anr., (2023) 3 SCC 544. (paras 63, 75, 83, 92, 114, 121 and 145)

6. State of Tamil Nadu v. National South Indian River Interlinking Agri Association, (2021) 15 SCC 534 (paras 10 and 11)

7. MP Housing & Infrastructure Development Board v. Vijay Bodana (2020) 4 SCC 521, (paras 6 and 8)

8. Pune Municipal Corporation v. Promoters and Builders Association & Anr, (2004) 10 SCC 796. (paras 4, 5 and 6)

9. Chairman Indore Vikas Pradhikaran v. Pure Industrial Coke & Chemicals Ltd. & Ors., (2007) 8 SCC 705 (Paras 43, 45 and 46)

10. Janhit Manch v. State of Maharashtra, (2007) Bom CR 329, (Paras 82, 84 and 95)

11. Jyoti Pershad v. Administrator for the Union Territory of Delhi, (1962) 2 SCR 125 (Para 19)

12. Maharashtra State Board of Secondary and Higher Secondary Education v. Paritosh Bhupeshkumar Sheth, (1984) 4 SCC 27 (Para 14)

13. Manish Kumar v. Union of India, (2021) 5 SCC 1 (Para 108, 111, 149 and 155)

14. Indore Vikas Pradhikaran v. Pure Industrial Coke & Chemical Ltd, (2007) 8 SCC 705 (Para 43 and 45)

15. Delhi Cloth Mills & General Co. Ltd. v. Union of India & Ors., (1983) 4 SCC 166 (Para 28)

16. Ram Prahlad Khatri & Ors. v. State of Maharashtra & Ors., (Para 19)

17. Maharashtra State Board v. Paritosh Bhupeshkumar Sheth & Ors, (1984) 4 SCC 27 (Para 14, 16, 18 and 22)

18. KT Plantation Pvt. Ltd. v. State of Karnataka, (2011) 9 SCC 1, (Para 58, 59 and 60)

4. **RELEVANT PROVISIONS OF THE TCP ACT HAVING AN IMPORTANT BEARING ON THE CHALLENGE**

(a) **Section 17(2)**

"***17. Revision of regional plan.—***

(1) ….

(2) Notwithstanding anything contained in sub-section (1), if the Government is of the opinion that alteration/modification is necessary to be carried out to the regional plan for the purpose of rectifying any inadvertent error that has occurred in the regional plan, and for correction of inconsistent/ incoherent zoning proposals in the regional plan, it may direct the Chief Town Planner (Planning) to carry out such alteration/modification to the regional plan and the Chief Town Planner (Planning) shall by notification in the Official Gazette carry out such alteration/modification to the regional plan in such manner and only to such extent as prescribed."

(b) The important definitions which need to be noted. These definitions form part of Chapter I of the TCP Act.

(i) Section 2(4) defines Board as under:-

*"(4) "**Board**" means the Goa Town and Country Planning Board constituted under section 4";*

(ii) In 2(6) the Chief Town Planner means:

*"(6) "**Chief Town Planner**" means the Chief Town Planner appointed under section 3";*

(iii) In 2(16) the Land means:

*"(16) "l**and**" includes benefits arising out of land and things attached to the earth or permanently fastened to anything attached to the earth";*

(iv) In 2(17) the Land Use means:

*(17) "**land use**" means the major use to which a plot of land is being used on any specified date;*

(v) In 2(25) the Plot means:

*"(25) "**plot**" means a continuous portion of land held in one ownership";*

(vi) In 2(26) the Prescribed means:

*"(26) "**prescribed**" means prescribed by rules made under this Act;"*

(vii) In 2(31) the Zoning Plan means:

*"(31) "z**oning plan**" means a Zoning Plan prepared under this Act."*

(viii) Sub-section 32 of Section 2 says that:

"(32) words and expressions used in this Act and not defined herein but defined in the Goa Municipalities Act, 1968, shall have the same meanings as are respectively assigned to them in that Act."

(c) Chapter II comprises provisions relating to the appointment of CTP and constitution of the Goa Town and Country Planning Board **("Board")**. Sections 3, 4, 7 and 8 read thus:-

3. Appointment of Chief Town Planner.— (1) *The Government shall, by notification, appoint Chief Town Planner (Administration), Chief Town Planner (Land Use) and Chief Town Planner (Planning), all possessing qualifications in Town and Country Planning as prescribed, for the purposes of this Act.*

(2) The Government may by an order transfer, change, substitute or appoint any of Chief Town Planners of any of the three posts in the preceding sub-section (1)".]

4. Constitution of Goa, Daman and Diu Town and Country Planning Board.— (1) *The Government shall, by notification, constitute for the Union territory, a Board to be called the Goa, Daman and Diu Town and Country Planning Board.*

(2) The Board shall consist of the following members, namely:—

(a) The Minister-in-charge of town and country planning, who shall be the Chairman thereof;

(b) Secretaries to Government in the departments dealing with the following subjects, namely:—

(i) town and country planning;

(ii) local self Government;

(iii) planning; and

(iv) industry;

(c) Head of the Public Works Department;

(d) Head of the Forests Department;

(e) Director of Agriculture;

(f) Director of Tourism;

(g) Director of Transport;

(h) Director of Health Services;

[(h1) Director of Bureau of Economics, Statistics and Evaluation;

(h2) Director of Fisheries]

(i) four members nominated by the Central Government to represent respectively the Ministries of that Government dealing with:

(i) railways;

(ii) defence;

(iii) transport; and

(iv) tourism;

(j) two persons having special knowledge of, and practical experience in, matters relating to town and country planning, architecture, engineering, transport, industries, commerce, agriculture or geology to be nominated by the Government;

(k) one person deputed by Chamber of Commerce and Industries, Goa;

(1) two members of the Legislative Assembly to be elected by the members thereof;

[(m) the Chief Town Planner (Planning), Member Secretary".]

(3) The Government may appoint one of the members of the Board as its Vice-Chairman.

……

7. Meetings of Board.— *The Board shall meet at such times and places as it may think fit and observe such rules of procedure in regard to the transaction of business at its meetings as may be prescribed.*

8. Functions and powers of Board.— (1) *Subject to the provisions of this Act and the rules made thereunder, the functions of the Board shall be to guide, direct and assist the Planning and Development Authorities, to advise the Government in matters relating to the planning, development and use of rural and urban land in the Union*

territory, and to perform such other functions as the Government may, from time to time, assign to the Board.

(2) In particular, and without prejudice to the generality of the foregoing provisions, the Board may, and shall if required by the Government so to do—

(a) direct the preparation of development plans by the Planning and Development Authorities;

(b) undertake, assist and encourage the collection, maintenance and publication of statistics, bulletins and monographs on planning and its methodology;

(c) co-ordinate and advise on the planning and implementation of physical development programmes within the Union territory;

(d) prepare and furnish reports relating to the working of this Act; and

(e) perform such other functions as are incidental, supplemental or consequential to any of the functions aforesaid or which may be prescribed.

(3) The Board may exercise all such powers as may be necessary or expedient for the purpose of carrying out its functions under this Act.

(d) Chapter III of the TCP Act are provisions relating to Regional Plans. Relevant of which are Sections 9 to 16. The same reads thus:-

"***9. Power to direct preparation of regional plans.—*** *The Government may direct the Chief Town Planner (Planning) to prepare regional plans for any part or parts of the State of Goa and the period within which such regional*

plans may be prepared shall be specified in the direction.

10. Preparation of regional plans.—*Subject to the provisions of this Act and rules and regulations made there under, the Chief Town Planner (Planning) shall after carrying out such surveys as may be necessary of the physical, social and economic conditions and potentialities of the area in respect of which a regional plan is to be prepared under section 9, prepare a regional plan for such area together with a report explaining the various aspects of development proposed in such plan.*

11. Contents of regional plan.— (1) *Subject to the provisions of this Act and any rules made there under, the regional plan shall indicate the stages by which development may be carried out, the network of transport and communication lines, the proposals for conservation and development of natural resources and such other matters as may have an influence on the development of the concerned area.*

(2) In particular, and without prejudice to the generality of the foregoing provisions, a regional plan may provide for all or any of the following matters, namely:—

> *(a) the broad demarcation of areas for agriculture, forestry, industry, mineral development, urban and rural settlements and other activities;*
>
> *(aa) proposal for transferable development rights, transferable development right for posterity, accommodation reservation or any other similar technique for promoting planned development;*

(b) the reservation of land for recreation, botanical and zoological gardens, natural reserves, animal sanctuaries, dairies and health resorts and for the preservation, conservation and development of areas of natural scenery, forests, wild life, natural resources and landscaping;

(c) preservation of objects, features, structures or places of historical, natural, archaeological or scientific interest and educational value;

(d) the prevention of erosion of soil, provision for afforestation, or re-afforestation, improvement and re-development of water front areas, rivers and lakes;

(e) transport and communications network such as roads, highways, railways, water ways, canals and airports including their future development;

(f) rural and urban centres, both existing and new, indicating the extent of their anticipated growth;

(g) for irrigation, water supply and hydro-electric works, flood control and prevention of water pollution;

(h) providing for the re-location of population or industry from over-populated and industrially congested areas, and indicating the density of population or the concentration of industry to be allowed in any areas.

12. Board to consider the regional plan.— *The Chief Town Planner (Planning) shall refer the regional plan prepared under section 10, to the Board for its consideration and may make such changes in the regional plan as may be necessary in the light of the views expressed by the Board.*

13. Public notice of the regional plan.— (1) *The Chief Town Planner (Planning) shall notify the regional plan as modified under section 12, in the Official Gazette, and also in one or more local newspapers, indicating therein the place or places where copies of the same may be inspected and inviting comments in writing from the public on the regional plan within such period as may be specified in such notification: Provided that such period shall not be less than two months from the date on which the regional plan is published in the Official Gazette.*

(2) After the expiry of the period mentioned in sub-section (1), the Chief Town Planner (Planning) shall refer the comments received from the public to the Board for its consideration.

(3) The Chief Town Planner (Planning) shall, if necessary, revise the regional plan and the report in the light of any modifications suggested by the Board and submit them to the Government together with the comments received from the public on the regional plan for approval.

14. Approval by Government.— (1) *The Government may, within the prescribed period, either approve the regional plan as submitted to it under section 13 or may approve the regional plan with such modifications as it may consider necessary, or may return the said plan to the Chief Town Planner (Planning) with instructions either to modify the plan or to prepare a fresh regional plan in accordance with such directions as the Government may issue in this behalf.*

(2) Where a fresh regional plan is required to be prepared under sub-section (1), the provisions of sections, 12 and 13 shall, as far as may be, apply to the preparation and approval of such plan.

15. Publication of regional plan.— *The Chief Town Planner (Planning) shall notify the regional plan as approved by the Government in the Official Gazette and also in one or more local newspapers, indicating therein the place or places where copies of the same may be inspected.*

16. Effect of regional plan.— *On and from the date of publication of the regional plan under section 15 for an area, all development programmes undertaken within that area by any private institution or by any other person shall conform to the provisions of such regional plan. However, public projects/schemes/development works, undertaken by the Central Government or the Government, shall be in conformity with the rules framed and procedures laid down by the Government for such projects/schemes/development works.*

Provided that, nothing in this section shall apply to the activity undertaken in pursuance of the permission/licence granted under the Mines and Minerals (Development and Regulation) Act, 1957 (Central Act No. 67 of 1957) and rules made thereunder."

By an Amendment Act 222 of 1997 Section 16A was inserted which reads thus:-

"***16A. Development to conform to regional plan.— (1)*** *No person shall undertake any work of development in contravention of any provision of the regional plan as in force, except the project/schemes/development works undertaken by the Central Government or the Government either by itself or through its servant or agent or any other person or any activity undertaken in pursuance of the permission/licence granted under the Mines and Minerals*

(Development and Regulation) Act, 1957 (Central Act No.67 of 1957) and rules framed there under, and all such development work shall be in conformity with the provisions of the regional plan.

(2) *Whoever undertakes any work or development in contravention of the regional plan as in force, shall be punished with simple imprisonment which may extend to one year, or with fine of Rs.10.00 lakh, or with both.*

(3) *An offence under this section shall be cognizable.*

By an Amendment Act 9 of 2018 Section 16B was inserted which reads thus:-

"***16B. Change of zone in Regional Plan.— (1)*** *If at any time, after the Regional Plan comes into operation, the Chief Town Planner (Planning) receives a written request from any person for change of zone of his land in the Regional Plan, he shall, after carrying out such fresh surveys and examination of the matter as may be considered necessary, submit his report to the Board and the Government, along with plan showing details about change of zone in the Regional Plan.*

(2) *Every request under sub-section (1) shall be made in such form as may be prescribed and accompanied by such fees as notified under sections 100A and 101A.*

(3) *The provisions of sections 12 to 15 shall, mutatis mutandis, apply for change of zone in the Regional Plan submitted under sub-section (1).*

> ***(4)*** *After the Regional Plan comes into operation, the Chief Town Planner (Planning) may, with the prior approval of the Government, make such changes in such Regional Plan as may be necessary for correcting any typographical or cartographical errors, omissions or details of proposals not fully indicated or changes arising out of the implementation of the proposals in the Regional Plan: Provided that all such changes are in the public interest and are notified to the public*."

However, by the Goa Town and Country Planning (Amendment) Act, 2014 dated 21.02.2024, Section 16B was omitted.

(e) Prior to the Amendment Act 4 of 2023, Section 17 read thus:-

> "***17. Revision of regional plan.— (1)*** *If the Government, at any time after a regional plan has been published in the Official Gazette, is of the opinion that a revision of such regional plan is necessary, it may direct the Chief Town Planner (Planning) to undertake the revision of the regional plan and thereupon the foregoing provisions of this Act relating to the preparation of the regional plan shall, as far as may be, apply to the revision of a regional plan under this section*."

(f) By virtue of Amendment Act 4 of 2023, Section 17 was numbered as sub-section (1) and Section 17(2) came to be inserted post amendment of 2023 which has been reproduced hereinabove.

(g) Section 17D was inserted by the Amendment Act 17 of 2022 reading thus:-

"***17D. Power to direct preparation of Zoning Plan. -*** *(1) The Government may the Chief Town Planner (Planning) to prepare a Zoning Plan in respect of the whole or any part or parts of the local planning area.*
(2) The Zoning Plan referred under sub-section (1) shall be prepared after consultation with the concerned local authority or authorities and it shall be within the broad framework of regional plan.
(3) The provisions of sections 12, 13, 14 and 15 of this Act shall mutatis mutandis apply for preparation of Zoning Plan."

(h) Section 17E deals with the contents of zoning plan which reads thus:-

"***17E. Contents of Zoning Plan. - (1)*** *The Zoning Plan shall,-*

(a) indicate, define and provide for all the matters that have to be, or may be, indicated, defined and provided for in the regional plan with such modifications as the Government deems fit;
(b) indicate, define and provide for-

(i) areas to be reserved for agriculture, public and semi-public open spaces, parks, playgrounds, gardens, and other recreational uses, green belts and natural reserves;

(ii) comprehensive land allocation of areas or zones for residential, commercial, industrial, public utilities, agricultural and other purposes;

(iii) complete road and street pattern and traffic circulation pattern for present and future requirements;

(iv) major road and street improvements;
(v) areas reserved for public buildings and institutions and for new civic development;

(vi) areas for future development and expansion, and areas for new housing;

(vii) amenities, services and utilities;

(viii) such other matters as may be prescribed or as may be directed by the Government or the Board to be indicated, defined, and provided for,

(c) include zoning regulations to regulate within each zone, the location, height, number of storeys and size of buildings and other structures, the size of yards, courts and other open spaces and the use of buildings, structures and land;

(2) Zoning Plan for local planning area may,-
(a) indicate, define and provide for,-

(i) all such matters including planning standards, gross and new density and such guiding principles as the Government may consider expedient to be indicated, defined and provided for in the regional Plan;

(ii) detailed development of specific areas for housing, shopping centres, industrial areas, civic centres, educational and cultural institutions, rain water

harvesting, garbage management, cattle pounds and other public utilities;

(iii) control of architectural features, elevation and frontage of buildings and structures;

(b) designate, any land as land subject to acquisition for any public purpose, and in particular, but without prejudice to the generality of this provision for the purposes of-

(i) the State Governments, or for any local authority or other authority established by law and public utility concerns;

(ii) dealing satisfactorily with the areas of bad layout or obsolete

development, slum areas for re-location of population
(iii) providing for open spaces, parks and playgrounds;

(iv) securing the use of the land in the manner specified in the regional plan;

(v) any of the matters as are referred to in clause (a).

(c) indicate and provide proposal for transferable development right, transferable development right for posterity, accommodation reservation or any other similar technique for promoting planned development.

(3) Subject to such rules as may be made for regulating the form and contents of a Zoning Plan, any such plan shall include such maps and such descriptive matters as may be necessary to explain and illustrate the proposals included in that plan."

(i) Chapter VI of the TCP Act deals with preparation of development plans. Section 39 thereunder are provisions relating to alteration of development plan and making of minor changes which reads thus:-

> *"**39. Alteration of Development Plan and making of minor changes.— (1)** At any time after the date on which a Development Plan for an area comes into operation, and at least once in every ten years after that date, the Planning and Development Authority shall, after carrying out such fresh surveys, as may be considered necessary or directed by the Board and the Government, prepare after consultation with the local authorities concerned, if any, and submit to the Board and the Government, a Development Plan for any alterations or additions considered necessary to the Development Plan in operation.*
>
> *(2) The provisions of sections 34 to 38 (both inclusive) shall, as far as may be, apply to a Development Plan submitted under sub-section (1).*
>
> *(3) At any time after the date on which the Development Plan for an area comes into operation, the Planning and Development Authority may, with the prior approval of the Government, make such minor changes in such Development Plan as may be necessary for correcting any typographical or cartographical errors and omissions or details of proposals not fully indicated in the Plan or changes arising out of the implementation of the proposals in the Development Plan:*
>
> *Provided that all such changes are in the public interest and are notified to the public."*

(j) By an Amendment Act dated 22.02.2024 after Section 39 of the principal Act, a new Section 39A was inserted. Section 39A reads thus:-

> "***39A. Change of Zone. (1)*** *Notwithstanding anything contained in this Act, the Chief Town Planner (Planning) upon direction of the Government or on receipt of an application in this regard and with approval of the Board, may, from time to time, alter or modify the Regional Plan and/or the Outline Development Plan to the extent as specified in sub-section (2) for carrying out change of zone of any land therein, in such manner as prescribed, after giving notice of 30 days inviting suggestions from the public, provided the change of zone shall not be in respect if any eco-sensitive land as may be prescribed.*
>
> *(2) The alteration or modification carried out under sub-section (1) shall not alter the overall character of the existing Regional Plan and/or the Outline Development Plan*."

(k) Chapter IX deals with levy, assessment and recovery of development charge. By an Amendment Act 31 of 2001, Section 100A which provides for levy of processing fees, fees for change of zone was inserted. Section 100A reads thus:-

> "***100A. Levy of processing fee/fees for change of Zone.— (1)*** *The Government may, by notification, levy a fee to be charged for processing of applications filed with the Board, for change of Zone in notified Regional plan of Goa, Outline Development Plans, Comprehensive Development Plans and Zoning Plans*."

(l) Chapter XI deals with miscellaneous provisions. Section 131 thereunder is a power to delegate reading thus:-

> "***131. Power to delegate.- (1****) The Board may, by a resolution and with the previous consent of the Planning and Development Authority, local authority or Government, as the case may be, direct that any power exercisable by it under this Act or the rules or regulations made there under may also be exercised by any Planning and Development Authority, local authority or any officer of the Board of the Government as may be specified in such resolution in such cases and subject to such conditions, if any, as may be specified therein.*
>
> *(2) The respective Chief Town Planner may, by an order in writing and with the previous approval of the Board direct that any of power exercisable by him under this Act or the rules or regulations made there under may also be exercised by any Planning and Development Authority, local authority, or any officer of the Board or the Government as may be specified in such order in such cases and subject to such conditions, if any, as may be specified therein.*
>
> *(3) Any Planning and Development Authority may, by a resolution and with the previous approval of the local authority or Government, as the case may be, direct that any power exercisable by it under this Act or the rules, or regulations made thereunder, except the power to prepare any Development Plan or to make regulations, may also be exercised by a local authority or any officer of the Government or Planning and Development Authority as may be specified in such resolution in such cases and subject to such conditions, if any, as may be specified therein.*

(4) The Town Planning Officer of any Planning and Development Authority may, by order in writing, and with the previous approval of the Planning and Development Authority, direct that any power exercisable by him under this Act or the rules or regulations made there under may also be exercised by any officer of the Planning and Development Authority or local authority specified in such order in such cases and subject to such conditions, if any, as may be specified therein."

(m) Section 140 is the rule making power. The relevant provisions under this Section read thus:-

"***140. Power to make rules.— (1)*** *The Government may, by notification, make rules to carry out the purposes of this Act.*

(2) *In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—*

(a) the qualifications in town and country planning for appointment as Chief Town Planner (Administration); Chief Town Planner (Land Use) and Chief Town Planner (Planning).

(b) the term of office of the members of the Board, the manner of filling casual vacancies among them and the allowances payable to such members for attending the meetings of the Board;

(c) the procedure to be followed in regard to the transaction of business at the meetings of the Board;

(d) the functions which may be performed by the Board and the Planning and Development Authority;

[(dd) form for making request under sub-section (1) of section 16B;]

…….

(g) the control and restrictions subject to which officers and other staff of the Board, and of the Planning and Development Authority may be appointed;

…….

(y) any other matter which has to be, or may be, prescribed."

(n) Pertinent in the context of the present case are the Goa, Daman and Diu Town and Country Planning Board Rules, 1976 which are made in the exercise of the powers conferred by Clauses (b) and (c) of sub-section (2) of Section 140 r/w. Sections 5 and 7 of the TCP Act and all other powers enabling the Government in that behalf. Rule 6 prescribes "Procedure to be followed in regard to the transaction of business at the meetings of Board". Rule 6 reads thus:

"***6. Procedure to be followed in regard to the transaction of business at the meetings of Board.—***

(1) The Board shall meet at such time and place as the Chairman may determine.

(2) Twenty days notice at least specifying the place, date and the hour of the meeting and the agenda shall be given to the members, but the non-receipt of such a notice by any member shall not invalidate the proceedings of the meeting.

(3) The Chairman and in his absence, the Vice-Chairman (if any) and in the absence of the Chairman and Vice-Chairman, any other member chosen by the members present from amongst themselves, shall preside at a meeting of the Board.

(4) The quorum necessary for the transaction of business at any meeting of the Board shall be one-half of the total number of members of the Board. If the requisite number of members is not present, the meeting shall stand adjourned for ten minutes and held as an adjourned meeting not requiring a quorum.

(5) The order in which the business shall be transacted at any meeting shall be determined by the presiding authority.

(6) All questions at a meeting of the Board shall be decided by a majority of votes of the members present and voting; and in the case of an equality of votes, the person presiding shall have a second or casting vote.

(7) A member, who is directly or indirectly concerned or interested in any proposal before the Board or is professionally interested on behalf of a principal or other person in any matter concerning the Board, or is engaged in any proceedings against the Board, shall, at the earliest possible opportunity, disclose the nature of his interest to the Board and the disclosure shall be recorded in the minutes of the Board. The said member shall not be present at any meeting of the Board when such proposal is discussed, unless his presence is required by the other members for the purpose of eliciting information, but no member so required to be present shall vote on any such proposal:

Provided that a member shall not be deemed to be concerned or interested as aforesaid by reason only of his

being a share holder of a company concerned in such proposal.

(8) Minutes containing the names of the members present and others who attended the meetings of the Board under the provisions of the Act, and of the proceedings of each meeting shall be kept in English in a minute book to be maintained for this purpose. The names of the members voting for or against any proposal or motion shall be recorded in the minute book. The minutes shall be signed, as soon as practicable by the presiding authority of such meeting. Such minutes shall be placed before the next meeting of the Board and shall, after confirmation by the Board, be signed by the presiding authority of such meeting, and shall be open to inspections by any member during office hours."

(o) In exercise of powers conferred by sub-section (2) of Section 17 r/w. Sub-sections (1) and (2) of Section 140 of the TCP Act and all other powers enabling the Government in its behalf, the Government of Goa made the 2023 Rules. The 2023 Rules are under challenge, hence are reproduced in its entirety reading thus:-

" ***The Goa (Town and Country Planning alteration/modification in Regional Plan for rectification of inadvertent errors and correction of inconsistent/incoherent zoning proposals) Rules, 2023***

Notification 21/1/TCP/GTCPACT/2023/882

In exercise of the powers conferred by sub-section (2) of section 17 read with sub-sections (1) and (2) of section 140 of the Goa Town and Country Planning Act, 1974 (Act 21 of 1975) and all other powers enabling it in this behalf, the Government of Goa hereby makes the following rules, namely:—

1. Short title and commencement.— (1) *These rules may be called the Goa (Town and Country Planning alteration/modification in Regional Plan for rectification of inadvertent errors and correction of inconsistent/incoherent zoning proposals) Rules, 2023.*

(2) They shall come into force on the date of their publication in the Official Gazette.

2. Definitions.— (1) In these rules, unless the context otherwise requires,-

(a) "Act" means the Goa Town and Country Planning Act (Act 21 of 1975);

(b) "Form" means a form appended to these rules;

(c) "Government" means the Government of Goa;

(d) "Regional Plan" means the Regional Plan notified under section 15 of the Act, which is in force;

(e) "Regulations" means the Goa Land Development and Building Construction Regulations, 2010 as amended from time to time.

(f) "registered professional" means and includes Architect registered by Council of Architecture or

Engineer/Structural Engineer, Town Planner and Urban Designer, registered under the Regulation;

(2) The words and expressions used in these rules but not defined shall have the same meanings as are respectively assigned to them in the Act.

3. Procedure for alteration/modification to Regional Plan.— (1) *The Chief Town Planner upon direction of the Government under sub-section (2) of section 17 or an application made by any person for rectification of inadvertent error and correction of inconsistent/ incoherent zoning proposal in the Regional Plan, shall scrutinize the proposed rectification/correction as directed by the Government or requested by the applicant and submit report with detailed analysis including report from a registered professional and such other reports as may be necessary to the Government for decision.*

(2) *Upon decision of the Government under sub-rule (1), the Chief Town Planner (Planning) shall carry out alternation/modification to the regional plan only to the extent as specified in rule 5.*

(3) *An application referred in sub-rule (1) shall be made to the Chief Town Planner (Planning) in Form 'A' hereto along with the fees as may be notified.*

4. Consultation with external agencies.— *Before carrying out any alternation or modification to the Regional Plan, the Chief Town Planner (Planning) may consult,—*

(a) Public Works Department, in case of major roads;

(b) Local Authority/body or Goa Waste Management Corporation; in case of playgrounds/open space or garbage management site, as the case may be;

(c) Water Resources Department and District Collector in case of disaster management site.

(d) Directorate of Agriculture, in case area of the property exceeds 5,000m2 and land recorded as 'rice' in Form I & XIV/index of land and is low lying paddy field under cultivation. (e) Forest Department in case area of the property exceeds 10,000m2. (f) such other authority as be deems necessary.

5. Extent of alterations/modification.— *The extent of alteration/modification in regional plan shall be as specified in this Rules and as per the guidelines approved by the Government.*

6. Notification of alteration or modification to Regional Plan.—

Every alteration/ modification effected in the regional plan shall be notified by the Chief Town Planner in the Official Gazette."

(p) It is also significant to reproduce Form 'A', which has a bearing on the controversy:

"*In terms of sub-rule 3(3), an application referred in sub-rule (1) shall be made to the Chief Town Planner (Planning) in form 'A' along with the fees as may be notified, the form prescribed is as follows:-*

FORM 'A'
[See rule 3 (3)]

From: _____
_____
_____

To, _____
_____
_____

1. Name and address of the applicant	-
2. Survey No., Village Panchayat and Taluka in which land is situated	-
3. Whether free hold or lease hold	-
4. Description of error, inconsistent/incoherent zoning proposal	-
5. Road Accessibility/Status	-
6. Tenancy details	-
7. CRZ status (River/Sea)	-
8. Past commitment (such as developments like sub-division approvals by Competent Authorities, Conversion Sanad under Land Revenue Code, 1968, building approvals/ NOC's etc.	-
9. Nature of land, specify whether sloping/ low lying	-
10 Correction/rectification sought with justification. Enclose a report by registered professional	-
11. Details of processing fee paid	-

Date:

Place:

Signature of the Applicant

Enclosed following documents:

i) Survey Plan.

ii) Form I & IV.

iii) Ownership documents.

iv) Contour Plan, photograph of the property if required.

By order and in the name of the Governor of Goa.
Rajesh J. Naik, Chief Town Planner (Planning) & ex officio Joint Secretary.

Panaji, 15th March, 2023."

(q) Though not under challenge, extensive arguments were advanced on the arbitrary nature of the powers conferred by the Guidelines made in terms of Rule 5 of the 2023 Rules. In pursuance of Rule 5 of the 2023 Rules, the Government approved the following Guidelines:-

"1. Applications/cases which can be considered as "inadvertent error" may include and not limited to the following:

"Inadvertent error" in the Regional Plan means and include errors like existing structures/past commitments which are not depicted in the Plan, land having less than 25% slope shown as "no development slope", wrong depiction of right of way of roads, non-feasible proposals for roads, depiction of

internal roads and open spaces of plotted developments, error in depiction of CRZ boundaries, buffer zones, untenable identification of Garbage Management Site, Disaster Management Site, Micro Industrial Zone.

Note: Existing structures means structure reflected in the survey plan and structures constructed with legal permissions.

2. Applications/cases which can be considered as "Inconsistent/ incoherent zoning proposals" and "alterations/modifications" may include and not limited to the following:

(i) Mismatch between Regional Plan-2001/0ld Outline Development Plan/ old Zoning Plan with the Regional Plan/Outline Development Plan in force.

(ii) Playground/open space shown in private properties without land acquisition proposals.

(iii) Land shown in non-settlement zones despite being located in the midst of larger settlement pockets or having development potential consistent with the development and infrastructure scheme.

(iv) Land contiguous to settlement zone and land in close proximity to settlement zone, despite having identical topographical features and not included in the settlement zone.

(v) Industrial land shown in the settlement zone and vice versa.

(vi) Forest land shown under non forest zone and vice versa.

(vii) Cases in respect of land who's zoning status have been reverted to agricultural and non-developable zone in the Regional Plan in force from settlement zone in the Regional Plan 2001.

(viii) Past commitments/approvals/Sanads granted in respect of properties which have been not included in the respective land use zones.

3. Areas such as low lying paddy fields, water bodies, khazan lands, flood prone areas, land having slopes more than 25%, forest land including private forest land, land falling in the buffer zone of Wild Life Sanctuaries, tenanted agricultural lands shall not be considered under sub-clauses (vii) and (viii) of clause 2 above.

4. In case of land falling within CRZ areas, comments of the GCZMA. shall be obtained.

5. In case of land falling under command area of Irrigation project, comments of CADA shall be obtained.

6. Comments from Forest Department and Agriculture Department
and other relevant authorities shall be obtained wherever necessary."

(r) Though the petitioners have given up a challenge to the Regulations, for the convenience the definition of 'Zone' under Regulation 2(149) of the Goa Building Regulations and the relevant provisions are as under:-

"***7. DEFINITION OF ZONE UNDER THE GOA BUILDING REGULATIONS***

REGULATION 2(149): "ZONE" is defined as under:
"2. (149) Zone means the classification given to various areas depending on its land use, in the development plans prepared by the Planning and Development Authority or Town and Country Planning Department;"

REGULATION 6.1.1 (d)

Regulation 6.1.1(d) is produced below:

6.1.1(d): Part-Regional Plan/Zoning Plan/Town Planning Scheme For the zoning plan/regional plan/town planning scheme and any other plans prepared and in force, the use provisions in those plan areas will be as per TABLE-VI below:

Zoning Plan/Part Regional Plan/Town Planning Scheme	*Zones for provisions of Zoning Regulations*
Residential	*S1/S2*
Commercial	*C2/C3*
Industrial	*11*
Institutional	*P*
Recreational	*R*

Note: *In such areas outside the jurisdiction of Planning & Development Authorities where F.A.R.s are specified more than 80% such F.A.R.s shall be reduced by 20% for development of plots with areas of 4,000 m2 and above.*

Provided, that if any person intends to develop land in Goa that is not specifically zoned or marked for specific use, or is according to the applicant wrongly designated, the relevant Competent Authority under the Act shall, after giving opportunity to the aggrieved person/persons to

present their view point, refer the matter to the Government and the Government may, subject to the provisions of the relevant Act, Rules and Regulations, permit such development, subject to conditions as may be directed to be imposed."

(s) Before we proceed to consider the submissions of learned Counsel, the salient features of RP-2021 need to be kept in mind. The preparation of RP-2021 was an elaborate exercise. A Task Force was constituted to guide the preparation of a comprehensive RP, in a time bound manner, for the prospective horizon year 2021. The relevant portions need to be extensively referred to.

5. **SALIENT FEATURES OF RP- 2021**

5.1 The Government of Goa, desired to prepare a broad based RP for the prospective horizon year 2021. To accomplish the preparation of the RP in a time bound manner the Government appointed a committee called "Task Force" for guiding the preparation of the RP for Goa, 2021AD, vide notification dated 4/10/07. The notification was amended vide another Notification dated 26/2/08, for guiding the revision of the RP for Goa.

5.2 Pursuant to the denotification of RP- 2011 under Section 17C of the Act due to mounting public pressure, the Government of Goa constituted a Task Force to guide the preparation of comprehensive RP, in a time bound manner for the prospective horizon year 2021, vide Notification no. 29/8/TCP/Pt.file/Task

Force/R.P. /2007 /3353 dated 04.10.2007. The aforesaid Notification was amended vide Notification of even no. dated 26.02.2008, for guiding the revision of the RP for Goa, for a period up to the year 2021. The Task Force, headed by the then Chief Minister of Goa as the Chairman, comprised of the following members:

01.	Hon. Chief Minister, Shri Digamber Kamat	Chairman
02.	Padma Vibhushan, Charles Correa	Vice Chairman
03.	Dr. S. P. Deshpande	Member
04.	Prof. Edgar Ribeiro	Member
05.	Dr. Oscar Rebello, Convenor, Goa Bachao Abhiyan Member	Member
06.	Ar. Dean D'Cruz	Member
07.	Er. Rahul Deshpande	Member
08.	Representative of Goa Chamber of Commerce & Industry Member	Member
09.	Representative of Goa Chamber of Housing Industry	Member
10.	Secretary, Town and Country Planning	Convenor

5.3 The Task Force which was appointed by the Government, submitted a Draft RP for Goa 2021 in September 2008 with recommendations to circulate the draft for public suggestions under Section 13 of the Goa Town and Country Planning Act 1974. The main objectives of RP-2021 are reproduced herein below :

> "The main thrust of RP-2021 was to create a more vibrant and prosperous Goa so that Goans, especially the young, feel confident they have a future here. Today there is an alarming brain drain out of Goa - for instance, more than 95% of the 700 engineers who graduate each year, leave Goa to seek their future elsewhere. We intend to create a Goa that has greater economic prosperity. A Goa that Goans are not tempted to leave and those who have left, start thinking of coming back.
> And we must do this in a manner that does not endanger the fragile eco-systems that make Goa what it is the forests, the mangroves, the paddy fields, beaches and villages. All these must be protected as part of our invaluable, and truly irreplaceable, heritage.
> We believe that this can best be done in open and honest collaboration with the people of Goa. Any planning for Goa must have their whole-hearted support so getting them to express their needs, their aspirations, is crucial to this task."

5.4 With these objectives in view, the Task Force for the RP-2021, met with different agencies, both public as well as governmental, various citizen groups and research organizations etc., in order to identify the most crucial issues that confront the people of Goa today. The issues that emerged are as under:

"i. Opaque decision making and a lack of transparency on the part of the authorities, is the single biggest factor in people's distrust of any official decision including ones which have been genuinely taken in the public interest. This must be corrected.

ii. The enormous pressures on Goa's limited land resources a pressure fuelled by speculation, and not

a result of the natural growth of population is fast changing the character of Goa's settlements, especially its villages.

iii. The growing tendency of farmers to convert their land into urban real estate indicates that the agriculture sector must be looked at urgently and made viable, in order to halt this trend.

iv. Two of Goa's major industries-mining and tourism-need to be reviewed. The sudden increase in mining over the last few years has intensified the socio-environmental problems it creates, while the coastal belt is unable to cope with the increasing developmental pressures due to tourism again leading to environmental degradation.

v. There is a need for affordable housing. As prices rise, (seemingly due to the insatiable demand for 'second homes' coming from the urban affluent in the rest of India), even modest accommodation is fast climbing out of the reach of the average Goan. This is deeply resented particularly since most of these homes remain unoccupied for much of the year.

vi. The physical and social amenities available in Goa (public transport, sanitation, health, education etc) need to be upgraded.

vii. Un-employment is a serious concern. There are not enough jobs, and too many of the new ones that are being created do not match skills that the local youth possess. Nor are there adequate training programs to help bridge this gap.

viii. The ad-hoc manner in which the type and location of new industries in Goa is determined, without any proper evaluation of the existing infrastructure, work force and local skills, is another major concern."

5.5 The Task Force having comprehended the issues, adopted a multi-pronged approach which is:

(a) A conservation strategy was put in place to prevent indiscriminate environmental degradation. Accordingly, Eco-Sensitive Zones (ECO I and ECO II) were created based on levels of vulnerability. In ECO I no development would be permitted. In ECO II partial development with restrictions and special controls would be permitted.

(b) For an all-round balanced economic growth, for new and better paying jobs for the resident population, right across the State and to reduce pressure from the Coastal belt and Urban areas, new growth centres/nodes were being proposed in the midland talukas, by upgrading and strengthening the transportation routes.

(c) Regional development control regulations were being re-drafted to ensure that the identity and character of Goa's settlements was not eroded. These would be overarching guidelines that would have to be strictly followed through the local level plans.

(d) At every level of envisioning the RP-2021, consultation with the stakeholders was contemplated.

5.6 The Task Force adopted the following process in preparation of the RP 2021:

(a) Participation: The Regional Plan had been conceived with active citizen participation. A consultative process was initiated by inviting presentations and secondary data from various government departments and other public institutions. The Task Force heard representations from industry, experts, MLAs, NGOs, citizen groups, and through local papers invited inputs from the general public. It also received a number of responses to its advertisement.

(b) Data Collection: Secondary data was collected from various state and central Government departments pertaining to existing and proposed schemes, trends and their effects.

(c) Mapping: It was observed that data received was sectoral and uncoordinated and would be difficult to use unless it could be overlapped and centralized. Therefore one of the early steps the Task Force initiated was preparing detailed digitized maps of all key sectors and departments, of the State. Currently, most of the eco-sensitive areas of the State like forests, khazan lands, mangroves, wildlife sanctuaries etc, have been mapped, so as to clearly indicate those areas of the State that need conservation and which are out of bounds of development. Existing settlement areas (as per RP-2001) along with gazette changes from 1988 upto 2005 are also being mapped. Further information

pertaining to existing infrastructure in terms of water, power, etc. has also been put in. The above information is also being linked to land survey records as accurately as possible so that at the taluka level and smaller settlement levels, it would then be possible to comprehend the actual impact of all zones, land-use, etc, which are under consideration.

(d) Framework Plans: The Task Force was to propose a broad Regional Plan for Goa, (mapped at a scale of 1: 1,00,000), together with 2 District plans (mapped at a scale of 1: 50,000) and 11 Taluka plans (mapped at a scale of 1: 25,000). These Framework plans would include new proposals, update correct/modify the RP-2001 as and where necessary to respond to the concerns and would incorporate suitably (in context of proper planning) planned government proposals and schemes. The underlying criteria of the Framework plan would be to make Goa an economically prosperous state, without over exploiting its natural resources.

(e) Bottom-Up alongside Top-Down Planning (Addressing the 73rd and 74th Constitutional Amendments): In order to ensure that the process of bottom-up planning will influence top-down planning decisions, and vice-versa, these Framework Plans will be notified for public suggestions within a period of 60 days from the date of notification. These inputs would

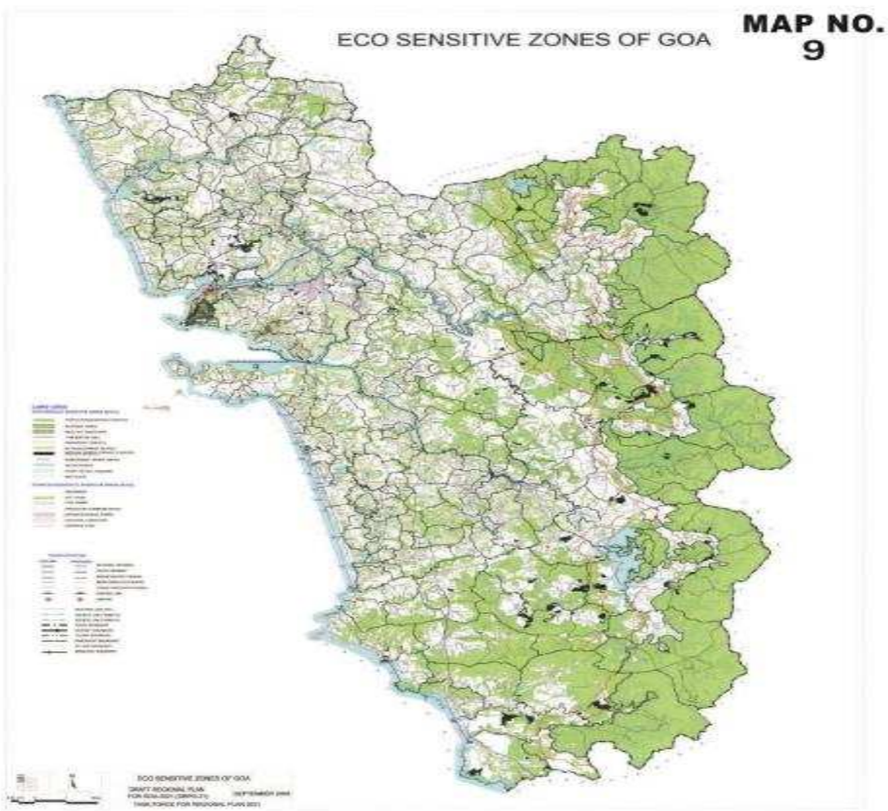
then be synthesized by the Task Force with the Framework Plans within a period of two more months for Government to form the Final Regional Plan. i.e. RP-2021 Based on RP-2021, the Settlement Plans (at scale 1: 5000) and the Ward Plans (at scale 1: 2000) would prepared, with the land uses and zoning detailed in conformity with the developmental controls stipulated.

5.7 Thus, the Task Force was of the view that there was a need for a balanced, well spread and all-round economic development of the State. The Task Force kept in mind that as Goa develops, it is important that over-centralization should be avoided that seems to accompany economic growth in the rest of India. The key to achieving this kind of balanced population distribution is created through the pattern of jobs and public transport across the land. People migrate to where the jobs are. The Task Force was conscious that Goa's future depends on our grasp of this cardinal principle.

5.8 The Task Force then dealt with the Eco Systems. In order to protect Goa from further damage, the first step that the Task Force has undertaken is to identify the areas of great ecological importance that should not under any circumstances, be touched. These areas, collectively grouped as ECO I cover 54.06% of Goa's total area. The second zone, ECO II, represents those areas which are also of ecological importance, in which essential but only very minor interventions could be permitted.

This zone covers 26.29% of Goa's total area.

5.9 Following is the map depicting the eco-sensitive zones of Goa which shows the land uses in ECO I and ECO II The land uses shown under the ECO I indicate in the respective colours as Protected/Reserved Forests, National Parks, Wild Life Sanctuary, one kilometre buffer from the Wild Life Sanctuary, Mangrove Forests, No Development Slopes, Natural cover/Private Forests (subject to confirmation), Sand Dunes/Sandy areas, Paddy fields/Khazans and Mud Flats.



5.10 The ECO II shows the land uses as Orchards, Salt Pans, Fish Farms, Irrigation Command Areas, Archaelogical Parks, Heritage Landscape and Heritage Trail.

5.11 The map then indicates the transportation network, existing and proposed of National Highway, State Highway, Major District Roads, Main Panchayat Roads, Other Panchayat Roads, Railway Line, Airport and then High Tide Line (HTL), 200 metre Line from HTL, 500 Metre From HTL, State boundary, District boundary, Taluka boundary, Panchayat boundary, Village boundary and Municipal boundary.

5.12 The Task Force then took into consideration that Goa's landscape is an irreplaceable asset. If development endangers this valuable treasure, then it is obviously self-defeating. In concept of heritage landscapes, the Task Force observed that such built heritage is protected by law and believe that certain stretches of the natural landscape need to be safeguarded by a similar mechanism. The heritage landscapes indicated in the report, are identified and demarcated in RP-2021.

5.13 It is further significant to note that the Task Force stated that the list is not exhaustive and more of these special landscapes could be proposed by the people during the preparation of the Settlement Plans. The Task Force then took into consideration the growth factor. It was felt that if Goa's standard of living is to improve, then economic growth is crucial. In this process, better communication and interaction are vital factors. Thus, it felt the urgent need as of that day was to put back a network of excellent public transport systems that will provide Goa with the interaction and synergy that the economy so clearly requires.

5.14 The draft has proposed the networks, recommended expediting the work on the proposed rail network. It provided for waterways, etc. New growth centres were proposed for deflecting growth and investment from the already crowded coastal belt to the less developed midlands. It envisaged that Pernem, Usgaon and Quepem could become new hubs, based on Industrial and Educational activities, together with the new railway hub at Sanvordem. The Task Force factored in the new international Mopa airport. The Task Force took into consideration host of policies and infrastructure such as education, health, medical tourism, water electricity and waste management. It also took into consideration the pollution viz-a-viz the growth and migration and impacts of in-migration. Agriculture, industry, mining, tourism was factored in and recommendations were made accordingly.

5.15 What is significant about the draft RP-2021 was that for the first time in India, the grass roots consultative processes advocated in Articles 73 and 74 have been integrated into the preparation of the State RP. The Task Force felt that this will go a long way to correcting the Top-Down decision-making that so distorts planning in our country. The Task Force was conscious that vested interests can enter the process from many different points sometimes at the highest level as well. The Task Force was concerned as to how can the planning process, and the people of Goa, be protected from this kind of exploitation. They did not have any easy answers to this crucial question. What

according to the task force RP -2021 has done was set up an explicit and transparent procedure, that is clearly structured, and that involves the people of Goa and thus at all times is under the scrutiny of the media and the public.

5.16 It is important to note that this process of preparing the final RP-2021 and the Settlement Plans was proposed to consist of two interlinked stages. The Regional Plan and the District Plan. It is significant to note that the Task Force prepared the final RP-2021 and the settlement plan consisting of two interlinked stages, such as 'In Stage 1' and 'In Stage 2', which reads thus:

> "In Stage 1
>
> 1. The Regional Plan, the District Plan, the Taluka Plan, and the existing Land-Use Plan of each Panchayat (at a scale of 1:5000, showing the existing land-use), will be displayed in the Taluka Planning Office, and discussed with the inhabitants of all the settlements in that Taluka, so that they understand the overall context in which they exist, as well as their relationship to the other settlements.
>
> 2. Simultaneously in each Settlement, the plan of its existing land-use at a scale of 1:5000), together with the Taluka Plan (at 1:25.000), will be displayed and discussed with the inhabitants.

3. The next step is to ascertain the needs and desires of the people in that Settlement with regard to the key parameters of basic services (Electricity, Roads, Water Supply, etc), as well as Health and Education and other livelihood needs. In addition, the people of the Settlement will also vote on whether they wish to increase or decrease the land-use areas, the FAR, and densities shown in the Framework Plans. This information will then be co-related and incorporated into the final version of Regional Plan-2021 (to be completed by January 2009).

In stage 2

The Proposed Settlement Plans will be formulated. Since the time involved in developing these Settlement Plans might vary considerably, (depending on the size of each settlement and the kind of issues involved), this process should start as soon as the presentation to the public of the Framework Plans is completed in November 2008. Each Proposed Settlement Plan must be developed in close consultation with the inhabitants of that settlement specifying the roads, electricity, water, sewerage and other services line

required, as well as health, education and other community facilities. It will also specify which parcel of land is to be developed - and at what density, etc. In other words, it is a plan made for the people for the habitat in which they live.

The dove-tailing of all these Proposed Settlement Plans (at a scale 1:5000), so they co-relate to each other, will be done first in the Taluka Plan (prepared at a scale of 1:25,000) - which will then be incorporated into the District Plan (at a scale of 1:50,000).

These Proposed Settlement Plans (at a scale of 1: 5000) will be prepared in consultation with the inhabitants of each settlement.

In each settlement, the process for preparing the Proposed Settlement Plan will involve:

1. Updating/preparation of Draft Settlement Plans (showing existing land-use)
2. Finalisation of Draft of the Proposed Settlement Plans for inviting objections
3. Processing of Proposed Settlement Plan for approval
4. Notification of Final Settlement Plans”

5.17 It was decided that after finalisation of RP-2021 in

December 2008, there should be only inevitable changes in land use for the next five years. After this period, starting in January 2012, the RP should be reviewed and updated every 5 years for a 20-year perspective. All these reviews and other changes must be completely transparent, with the full knowledge of the public.

5.18 This Report makes it clear that a key factor in this whole process is not just Government at the highest levels, but the Municipality/Village panchayats as well. They must get involved in developing their settlement in the right direction by ensuring a positive interaction between the people at the grassroots level, the Municipal bodies / Village Panchayat at the local level, and the TCB at the State level. The Wards, each with an elected Councillor or Panch have a key role to play in this form of participatory planning. In fact, Ward-level Local Area Plans are crucial components in the process of preparing the Settlement Plan for Goa.

5.19 It is also significant to refer to the Chapter titled "A word on mapping", which reads thus :

> "All the previous Regional Plans prepared for Goa, including RP 2001 and RP 2011, have been based on the Topographical Sheets provided by the Survey of India. This means that the land use shown in these plans could not be directly related to the Survey Maps prepared by the Land Survey Department of the Goa Government which depicted the actual property lines etc. on site, as though it were a flat 2-dimensional surface. Since these Regional Plans had to be used for local level development, there was a great deal of

ambiguity and scope for "interpretation".

To avoid this danger, RPG-21 decided to digitize and directly co-relate all the data at the regional level to the land survey records and revenue data thus making it possible to comprehend the actual impact of all zones, land-use modifications, etc, at the taluka and settlement levels. For this purpose, the Topo Sheets and the Survey Maps were co-related one to the other, and the reconciled drawings were then cross-checked with aerial and satellite photographs to reconfirm the decisions made.

These digitized maps provided the opportunity not only to incorporate data from various Government Departments, but for the first time, map accurately the eco-sensitive zones of the Statee.g. forests, khazan lands, mangroves, wildlife sanctuaries, paddy fields, no development slopes etc. identifying the areas of the State that need conservation, and are thus out-of-bounds for development. In some areas, like agriculture, forestry and mining, the data now put together by the Task Force has been updated in consultation with the Departments concerned. For example, non-developable slopes have been identified and for the first time paddy fields have been mapped on the basis of Revenue records. Further information pertaining to infrastructure in terms of water, power, etc. has also been incorporated.

Also mapped were all existing settlement areas (as per RP 2001), including a few missed out in 2001, along with gazette changes from 1988 up to 2005. Incorporating the gazette changes meant that more than 4000 government files had to be located, the findings noted, and the

> changes entered into the digitized land-use maps. This was a Herculean task and from these experiences, it is very clear that Goa needs to strengthen data collection at all levels. The Task Force firmly believes that mapping contributes greatly to transparency and we strongly recommend that all further efforts and continual follow-up should be in the public domain.
>
> Though we have executed this crucial task to the best of our ability, there are still issues that can necessitate actual ground surveys and verification at the local level. These Plans are therefore being issued to the people of Goa with the request that they now be further checked, the data verified and the discrepancies pointed out, so as to be incorporated into the final RPG-21 to be issued in March 2009."

5.20 What is important to note is that the RP provides a long term vision and a related spatial perspective (through a structural plan or its equivalent) for integrated investments that ensures an ecologically acceptable environment. The Plan therefore is required to guide the appropriate use of land as accessed by people on a continuing basis but on the principle of "opportunities within identified beneficial constraints". The Task Force also took into consideration that as the economic accretion of stakeholders is a dominant concern, flexibility is built into the long term spatial perspective (twenty or more years) through updates or correctives at least once every five years. More importantly, the RP ensures that all its constituent urban and rural settlements and other critical components are truly

integrated and fleshed out and projected through a series of related implementable plans through a participatory process. This not only critically accepts government approved sectoral programmes and plans-PPP or otherwise but also the down-top settlement level livelihood programmes and plans. The salient feature of RP-2021 is that Goa was the first state of the Union to have a RP that covered the whole State. This Plan was legalized under the TCP Act, 1974 and was operative for the period 1986 to 2001 (RP-2001). RP-2001 was formulated as a first exercise of its kind in India and at a time when Goa was transitioning from a Union Territory (with full Central financial support) to a State (with partnership central financial support). It thus emerged as a top-down plan through a suggestions process that did not involve as widespread a debate as expected. This was also because the Plan provided a much needed canvas for regulated growth when Goa was just emerging as a world-tourist destination. While undertaking the review of RP-2001, the Task Force recommended a revised format of RP-2021. While making the recommendations, the entire focus was on the planning development where several aspects were taken into consideration as indicated in the report. A careful perusal of the report indicates that while planning, the same was done in the context of global warming in the spatial context, then the process which was adopted by the Task Force indicated in preparation of RP-2021. The demographic and spatial strategies with all necessary facts and figures were worked out, the urbanisation trends, densities, etc.

5.21 At this juncture, it is necessary to refer to the settlement form which guided the Task Force, which reads thus :

> "2.5.1 ISSUES
>
> a) The character of the towns and villages is changing rapidly and it is essential to have broad guidelines in place to prevent this sudden change.
>
> b) Currently there is a second boom in the construction industry and several apartment complexes are coming up. They often are situated along natural edges and on hill slopes (often in rural settings and in peri-urban situations) so as to enjoy the view. Due to their larger ground coverage and increased heights they tower over the landscape and diminish the very landscape they consume. Norms need to be laid down regarding all developments in villages and towns so as to preserve the character of Goan towns and villages.
>
> c) Goa, with 359 villages and 14 towns, has a strong poly-nucleated structure which is being eroded by the growing strip developments/ribbon development that is now the norm along all the major road right-of-ways in Goa. This is one of the biggest dangers that Goa faces the kind of urban sprawl that is being generated along the road right-of-ways that connect the various towns and villages. Parameters need to be specified that control such development.
>
> d) Nearly three-fourths of Goa's population is in the coastal belt. This is also the hub of all tourist activity. As a result this coastal belt is being rapidly transformed both by tourism and

by the current speculative boom in real estate-primarily for second homes near the sea. There is an urgent need to restrict haphazard development in this area while consciously upgrading the infrastructure of this belt to prevent environmental fallouts.

e) In the coastal belt Goa has so far managed to keep a unique balance of the 'rural' and the 'urban' i.e. access to an urban lifestyle in a rural setting. We need to enhance and extend this quality by offering good amenities in all 359 villages of Goa (especially water, sanitation, public transport, medical and educational facilities).

2.5.2 POLICIES AND SPATIAL CONTROLS

a) To maintain the character and scale close to the existing housing form in the villages of Goa, it is essential that the building footprint be defined, so as to avoid large blocks of buildings. Therefore, in the case of large tracts of land which are plotted, the amalgamation of these into single entities should be discouraged.

b) Large developments need to be governed by good planning standards so as to create greater levels of open space and public amenities. In the case of group housing, the present practice of using FAR of the whole plot without deducting for roads, open space, amenities should be stopped as this leads to overbuilding and sudden increase in density in the village where they are located. This has been addressed in Chapter 8, Sec. 8.3.

c) In general, densities are low to modest for which infrastructure can be incrementally upgraded. Therefore, there is no need for accelerated densities in village panchayat areas

as this would disrupt the provision of infrastructure.

d) In no event should projects approved on the basis of ground water withdrawal but on the basis of piped water networks provided in advance.

e) To discourage ribbon/strip development between settlements, it is decided to freeze development along certain critical lengths of arterial roads that connect Goa's towns and villages. These shall be declared as 'No Development Zones".

5.22 The Task Force took into consideration the existing situation in the State of Goa which had about one-third of its geographic area of Government forests, of which about 62% are under the Protected Area Network. The details of the private forests, mangrove forests, forest produce are indicated in the preparation of the RP- 2021. One of the important issues flagged off by the Task Committee is as regards the endemic laterite plateaus which are supposedly bio-rich habitats (the higher the altitude the greater the bio-diversity). It observed that in Goa, plateaus are the first casualty of a lot of planned development, largely due to lack of knowledge of their true value.

5.23 The issues faced due to the mining activities, the importance of industry, fishing activities, tourism, housing, education, was given in-depth consideration. Then, a reference to the chapter on eco-sensitive zones in Goa needs to be made, which enlists the ecological features constituting ECO I and ECO

II zones, as follows:

ECO I encompasses areas rich in biodiversity that require complete conservation. These regions are designated as no-development zones, where a total prohibition on developmental activities is enforced. Any intrusion into these areas could jeopardize the quality and health of the environment. However, development related to forest and wildlife management may proceed in accordance with existing legal provisions.

ECO-1 includes:

(i)	Forest Lands a) Protected/Reserved/Private Forests b) National Parks/Wildlife Sanctuaries	The Private Forest areas indicated were subject to final confirmation by the Forest Department and the Government as there was an ongoing survey in this regard.
(ii)	Water Bodies a) Rivers/Rivulets b) Natural Springs c) Tanks and other water bodies	All rivers, tanks, nallas, creeks, reservoirs have been included as water bodies. The Rivers/Nallas which are running between Talukas, District or State were considered to be 50% on either

		side for the purpose of area calculation.
(iii)	Mangrove Forests	Mangroves are ecologically important, protected vegetation found all along the coast in marshy areas, along rivers and swamps and classified as "forest".
(iv)	Non-developable Slopes (As indicated in RP-2021)	All slopes with gradient 25% and above are generated by using contours from Topographical maps of Survey of India with a 10 m contour interval. With this gradient as a starting point, No Development Slopes have been marked very carefully to include entire hill sides and ranges that need to be conserved. Occasionally these areas overlap with settlements due to errors of adjustment at taluka level map. In such cases,

		development should be allowed in developable zones only after detailed slope analysis is carried out.
(v)	Khazan Lands and Paddy Fields	All those lands which are classified as "Rice" as per the survey records are classified as paddy fields/khazans in the plan. However, this may also include "Bharad" lands which are cultivated during monsoon only but recorded as "Rice" in the survey records. This also includes fields which may have been kept fallow and not cultivated as well as khazan lands which are basically low lying fields / water borne lands.
(vi)	Sacred Groves (Devrais)	
(vii)	All areas demarcated as CRZ-I as per CRZ notification.	Areas that are environmentally most critical are classified as CRZ-I. These areas are

		further classified into CRZ-IA (encompassing ecologically sensitive areas and the geomorphological features which play a role in the maintaining the integrity of the coast) and CRZ-IB (comprises of the intertidal zone i.e. the area between Low Tide Line and High Tide Line)
(viii)	Sand Dunes	Large amount of sand deposited along coastal stretches in a heap or mound formation with some vegetation are sand dunes. These areas act as barriers or a natural wall between the forces of the sea and land and should also not be levelled or extracted. Dunes are an indispensable morphology of coastal landscape

		and needs to be protected at all costs. This will ensure that fields and settlements on the landward side are protected from sea aggression.
(ix)	Heritage Landscapes	RP- 2021 has marked some of the main turtle nesting sites, hills, slopes and escarpments as heritage landscapes. These are the areas which are beyond the classified forests. These areas need to be preserved for its landscape value and kept in public domain.

ECO II includes areas that must be protected from indiscriminate development, as such activities could cause irreversible damage to the environment.

ECO II includes:

(i)	Coastal Areas (Currently under CRZ regulations except CRZ-I areas)	Areas that are environmentally most

(ii)	Riverbanks (Currently under CRZ regulations except CRZ-I areas)	critical are classified as CRZ-I. These areas are further classified into CRZ-IA (encompassing ecologically sensitive areas and the geomorphological features which play a role in the maintaining the integrity of the coast) and CRZ-IB (comprises of the intertidal zone i.e. the area between Low Tide Line and High Tide Line).
(iii)	Agricultural lands (other than paddy fields/khazan lands – as included in ECO-1) which primarily includes areas under orchards (Kullagars and dry crops)	The zone of cultivable land includes areas derived based on command areas of irrigation projects excluding paddy fields and khazans (which are in Eco-I). These areas are proposed to be brought under cultivation through irrigation. Presently, the areas may be indicated as dry agricultural crop, orchards or barren lands. Some of these lands are also used as pasture. These cultivable lands are potential areas of agricultural production and will increase the areas under cultivation once irrigation is provided through the network of

		canals.
(iv)	Areas under Social Forestry	
(v)	Saltpans	These are low-lying areas used in seasonal manufacture of salt. These lands are basically khazan lands where traditional salt manufacturing is carried out.
(vi)	Net command areas of Irrigation Projects	Includes all areas within the Gross Command Areas of the Irrigation Project, excluding the areas within the existing settlement fence as per RP 2001 and all new settlement areas that will in future be included in the Settlement Fence.
(vii)	Fish Farms	Areas which are water borne, inundated khazan lands in backwaters, ponds, natural /manmade lakes etc are used for pisciculture. These areas are earmarked as fish farms. These areas also include existing as well as potential fish farm areas identified by the Fisheries Department.
(viii)	Archaeological Parks and Heritage Trails	

5.24 Even as regards the settlement plan, there is a crucial aspect considered which needs to be referred to :

"8.1. THE SETTLEMENT PLANS

8.1.1 - RPG-21 aims at adding credence to the functions of DPC's through fleshed out Spatial District Regional Plan's and disaggregated Spatial Plans (at Taluka/Block Level).

8.1.2 - The Settlement Plans (1 Municipal Corporation, 13 municipal and 189 village panchayat at present) are to be each buttressed by ward level Local Area Plans (LAP's). To fulfill requirements under the 73rd/74th CA Acts 72, the reference point of Settlement Plans is the elected Mayor President/Sarpanch of the Local Body each supported by a Committee comprising of all elected ward councillors in their jurisdiction. For LAP's the reference point is the electoral Ward Councillor/Panch supported by a small adhoc committee of ward level stakeholders.

8.1.3 - Settlement Plans are to be prepared within the projected populations as shown for each settlement in the Appendix IX.

The plans are to incorporate:

a) Governmental Sectoral Programmes and projects through the 5-year economic plan (upto 2012 at present) including PPP projects/programmes and annual budgets and

b) Settlement level livelihood economics down-top programmes and projects, as assessed at the Ward and settlement level through the participatory process.

8.1.4 - Thus the WARD emerges as the fulcrum for the planned development of

> settlements. To make the settlement plan process effective, the elected LSG members are to spearhead within their respective WARD jurisdictions the Local Economic Programmes (incorporating livelihoods and poverty alleviation) along with the top-down sectoral investment programmes to be located in the concerned settlement and emanating from the State, District, Taluka/Block Investment commitments and spatial plans."

5.25 Even here, the Task Force recommended the importance of participatory process of local bodies. The report also indicates that various presentations were made to the Task Force by experts and institutes, in addition to which public inputs were received and based on all this, a comprehensive draft RP was submitted. What we can decipher from the draft RP is the extent of thought and scientific study that went into planning. This, no doubt, is a broad-based plan. The significance of the landscapes of Goa cannot be lost sight of. It has ECO I, ECO II zones and, therefore, what was needed was meticulous planning before presenting the draft RP- 2021.

6. The Draft RP-2021 was submitted to the Government of Goa by the Task Force in September 2008 and was notified by the Government of Goa vide notification in the Official Gazette Series III no. 29 dated 16th October 2008, and the public were invited to comment on the same within a stipulated time period of 90 days. The Government of Goa, on the recommendation of the Town & Country Planning Board (133rd Meeting) held on 29.9.2008 constituted a SLC for the purpose of the RP-2021,

which had been notified, inviting public comments. The SLC members were appointed vide order no. 29/8/TCP/TF/RP-2021/VPM/08/4507 dated 28 .11.08 and 29/8/TCP/TF/RP-2021/VPM/08-09/738 dated 12.2.2008.

6.1. The Members of the SLC for RP- 2021 included:-

01.	Hon'ble Chief Minister Shri Digambar Kamat	Chairman
02.	Padma Vibhushan Ar. Charles Correa, Ex-Vice Chairman Task Force	Member
03.	Shri T. M. Balakrishnan, Secy. Town and Country Planning Dept.	Member
04.	Er. Rahul Deshpande, Ex-Member Task Force	Member
05.	Shri Brian Soares, Chairman, Indian Institute of Architects	Member
06.	Shri Dean D'Cruz, Ex-Member Task Force	Member
07.	S. T. Puttaraju, Sr. Town Planner	Member
08.	Shri Sanjit Rodrigues, Director, Directorate of Industries, Trade and Commerce	Member
09.	Shri Menino D'Souza, Director of Panchayats	Member
10.	Shri D. A. Havaldar, Director of Municipal Administration	Member
11.	Shri Morad Ahmed, Chief Town Planner	Member & Convenor

6.2 The public participation process (which included receiving of comments, interaction at the level of the local bodies and

receiving inputs from the local bodies) took over 8 months after three extensions of the notification on public requests. In the final tally, over 8500 individual comments were received in addition to the comments/inputs from 176 Village Panchayats out of 188 and 8 out of 9 Municipal Councils.

6.3 Once all public inputs were received, it was decided to digitize every single public input and host it on the Government website. This digitization and hosting on the web were essential to maintain the highest level of transparency. It took considerable amount of time for digitization and uploading. Secondly, though public input/village panchayat comments were requested in a standard format, all inputs received from local bodies varied from the standard form indicated. In order to bring all inputs on the same platform, standardization of inputs was done which also took enormous time.

6.4 A full-fledged authentication/rectification process followed which included calculation of panchayat level land use data, rectification of slopes, correction of roads, demarcating natural cover zones and several other features. Such detailed authentication naturally required time and precision. The delay was also compounded by non-submission of additional data by departments like Agriculture, Public Works Department, Forest, Water Resources Department, Revenue Department and Land Survey Department whose responses to requests were extremely lukewarm if not cold. It is mentioned in the release

that to date, certain departments have submitted incomplete data while others have just not responded. This was, in a way, a major cause for delay in the mapping exercise and the RP Division was left helpless for want of accurate data.

6.5 During the participatory process, the Government also held several facilitation programs (in over 60 Panchayats) to help the local bodies interpret the RP-2021 correctly and to resolve conflicts between Village Panchayats and Planning Committees. The SLC records that it was extremely discouraging to find that in the intervening period of almost two years since the notification of Draft RP- 2021, the Government of Goa had taken no initiative on several key strategies (outlined in the Draft RP-2021) which are essential for the success of RP- 2021. This delay, the SLC noted, could have been turned into an advantage by the Government to propel Goa's growth in the direction envisaged by the RP- 2021. No steps were taken towards setting up any of the proposed new growth centres, conducting survey and mapping of agricultural fields, commissioning critical area plans for high density coastal areas, enhancing road networks like the hinterland connectivity suggested or the doubling of the Konkan Railway. There was a general public perception that RP-2021 is just another mapping exercise coupled with the sole thrust of saving of eco zones and converting settlement zones. It was emphasised that the Government as well as the public need to view RP-2021 in the same way as it was conceived not just as a map making exercise, but as a holistic and integrated plan for

sustainable growth of Goa taking all sectors into account.

7. As has been stated hereinabove, at the cost of repetition, it needs to be noted that the Final RP-2021 was notified in segments i.e. Release 1 (Land Use Plans for Pernem and Canacona) was notified on 25.11.2010, Release 1 (in part) (Land Use Plans for Sattari, Ponda and Quepem) was notified on 28.04.2011, Release 2 (Land Use Plans for Bicholim, Sanguem and Dharbandora) on 15.09.2011, Supplementary Release to Release 2 (Land Use Plan for Usgao) on 29.09.2011 and Release 3 (Land Use Plans for Tiswadi, Mormugao, Salcete and Bardez) on 20.10.2011. The horizon year for RP-2021 is 2021.

8. In response to the significant opposition to RP-2021, by an order dated 09.04.2012, the Secretary of the TCP Department placed the plan in abeyance. Subsequently, on 04.06.2012, by a further direction, the TCP Department stipulated that pending the drafting and notification of a fresh plan, RP-2021 would remain on hold, with RP-2001 serving as the reference plan. However, by an order issued by the CTP (CTP) on 28.03.2018, RP-2021 was re-notified and reinstated into effect.

CONSIDERATIONS

9. Having given our anxious consideration to the pleadings,

materials on record, the meticulous submissions canvassed by the Learned Counsel and the decisions relied upon, we render our opinion.

10. The reason why we have extensively referred to the draft RP and the Final RP is for the purpose of appreciating what went into making of the RP. There have been extensive surveys, scientific studies, calling for public comments, consideration of these comments, consultation with the local authorities, engaging with various experts in the field, reference to the fragile ecosystem of Goa and after such an elaborate exercise the RP was notified. The importance of zoning is adverted to hereinafter. Considerable study, thought and planning has gone into in identifying the zones. The task force was headed by the Hon'ble Chief Minister himself and the members of the Task Force were highly qualified persons in the field of planning and that related to planning. The SLC was appointed to consider the comments from the public received to the Draft RP submitted by the Task Force. The SLC was headed by the Hon'ble Chief Minister and other experts in the field of planning and related fields also comprising of some of the members of Task Force. Keeping this in mind, any changes to the zone will have to be in complete conformity and in a manner which is in consonance with the statutory framework of the TCP Act. It is therefore necessary for us to keep in mind the fragile ecosystem of the State of Goa. The RP prepared was for the entire State of Goa comprising of almost 80% of ECO I

and ECO II zones. The developmental concerns have to be addressed keeping in mind the statutory framework and the fragile ecosystem of the State of Goa. Tinkering with the RP in the manner not known to law or by following a procedure carved out bypassing the mandate of the Act can have disastrous consequences.

11. Goa is a small State situated along the western coast of India, nestled between the majestic Sahyadri mountain range and the vast expanse of the Arabian Sea. The Goan landscape is distinguished by its pristine ecological characteristics, which are intricately woven together and dispersed throughout the region. As such, any detrimental impact on a specific area has the potential to reverberate across the entire ecological system, highlighting the inherent fragility of this unique environment.

12. The ecological landscape of Goa can be broadly categorized into three topographical zones: the Eastern Ghats of the Sahyadri, encompassing the talukas of Sattari, Sanguem, and Canacona; the Midlands, which include Bicholim, Ponda, Eastern Sanguem, Pernem, and Quepem; and the Coastal Plains found in Tiswadi, Mormugao, Salcete, and Bardez.[1] About 33% of the Goan landscape comprises of lush forest cover.

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1 Regional Plan for Goa RPG- 21 Environment and Participation, Malini Krishnakutty (Urban Planner)

13. Several places along the coastline are intersected by dynamic estuarine river systems which cut across hinterland formations and wind their way towards the Arabian Sea; these can be classified as tide dominated coastal plain estuaries. The coastal zone comprises an intricate system of wetlands and lowlands, tidal marshes, cultivated paddy fields, intertidal beaches, all intersected by canals inland lakes, bays, lagoons and creeks, features which are governed by regular tides which raise or lower water levels by two or three meters daily. It is these geomorphic features which support mangrove thickets which are today visible far into the hinterland along river banks, distributary channels, creeks and lagoons. Several mangrove islands and localised mangrove swamps can be identified along all the seven rivers (Untawale et al., 1988); these contain a variety of mangroves, most of which are in various stages of degradation mostly due to human interference.[2]

14. While preparing RP-2021, the task force that was appointed carried out the mapping of eco sensitive zones of Goa. RP-2021 encompasses the entirety of the State of Goa, as the entire area is regarded as a singular region. The total area addressed by RP-2021 is approximately 370.20 crore square meters, equivalent to 370,20,00,000 m². Within this area, approximately 82.37% (304,93,86,000 m²) is designated as ECO I (188,59,43,700 m²) and ECO II (116,34,42,300 m²)

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2 Study of Goa and its Environment from Space, A Report on Coastal Sand Dune Ecosystems of Goa : Significance, Uses and Anthropogenic Impacts by Antonio Mascarenhas National Institute of Oceanography (March 1998)

zones.

15. The total area encompassed by the twelve talukas in Goa is approximately 367,19,50,000 m². ECO I accounts for 54.06% of the area of the State of Goa and includes within its purview, Forests (NP/Sanctuary/Protected/Reserved/Private Forests) (35.53%), Mangroves (1.22%), Water Bodies (5.32%), Khazan Lands/ Paddy Fields (11.66%) and Non Development Slopes (gradient over 33%) and CRZ-I areas. ECO II constitutes 26.29% of the area of the State of Goa, encompassing Orchards (27.77%), Cultivable Lands (3.32%), Salt Pans (0.06%), Fish Farms/ Mud Flats (0.13%) and CRZ-II areas. Thus, over 80% land is under eco-protection and regulated development. Settlement zone, accounting for approximately 20% of the area of the State of Goa, largely forms a part of the coastal belt of the State, interwoven with wetlands, lowlands, tidal marshes, cultivated paddy fields, intertidal beaches, etc. which form a part of the coastal ecosystem in Goa.

16. The focus of the petitioners'challenge to Section 17(2) of the TCP Act is that it permits private entities to request zonal changes on a plot-by-plot basis, undermining the principle of planned and sustainable development underlying the TCP Act. This, according to the petitioners, introduces a vice under Articles 14 and 21 of the Constitution of India and renders the provision invalid.

17. Let us consider the challenge in the context of Article 14 of the Constitution. It is important to note the scheme of the Act before one considers the petitioners' objections based on Article 14. The Act provides for planning the development and use of rural and urban land in the State of Goa. It constitutes various authorities including a Chief Town Planner, and Goa Town & Country Planning Board, which consists of several members including Minister in charge of Town Planning, various secretaries and heads of departments of the government, nominated members of Central and State Governments and of the Chamber of Commerce and Industries, Goa and Legislative Assembly. It is principally the function of the Board to guide and assist in planning and development, and use, of rural and urban land in the State. The Board, among other things, directs preparation of development plans and coordinates in planning and physical implementation of such development. On the Government's direction, the CTP prepares RP/s for any part/s of the State after carrying out surveys and assessing potentialities of the area/s covered by such RP/s. The RP contains broad demarcation of areas for agriculture, forestry, industry, mineral development, urban and rural settlements and other activities; it also contains proposals for transferable development rights, reservation of land for particular purposes such as recreation, natural reserves, animal sanctuary, etc.; it takes into account matters including preservation of objects or places of historical or archaeological interest, prevention of erosion of soil, afforestation, improvement of waterfront areas,

transport and communication network, etc. The plan prepared by the CTP is referred to the Board for its consideration. The CTP makes such changes in the plan as may be necessary in the light of the views expressed by the Board. The RP so modified is then notified in the official gazette as well as local newspapers and comments are invited from the public in writing. These comments are then referred by the CTP to the Board for its consideration. After the Board considers them, the CTP is required to revise, if necessary, the RP in the light of modification suggested by the Board. The plan is then submitted to the Government together with comments from the public. The Government thereafter approves the plan with such modifications as it deems necessary or alternatively returns the same to the CTP with instructions either to modify the plan or prepare a fresh plan in accordance with the Government's directions. The provisions concerning declaration to the public, consideration of public comments by the Board, as far as may be, apply to preparation and approval such fresh plan. The plan approved by the Government is then published in the official gazette and local newspapers. On and from the date of such publication, all development programs undertaken within the area covered by the plan ought to conform to the provisions of the plan.

17.1 The Act also provides for a revision of the RP whenever the Government is of the opinion that such revision is necessary. In this process of revision, the Governor may direct the CTP to

revise the RP and till the same is approved by the Government, include all steps which are necessary for preparation of a RP.

17.2 There is a provision in Section 39-A for change of zone for any parcel of land on receipt of an application in that behalf. This provision was inserted on 22.02.2024. Such application is considered by the CTP and if he chooses to make any alteration or modification of the RP on the basis of such application, there is a provision for a 30-day notice inviting suggestions from the public. No alteration or modification under this provision can alter the overall character of an existing RP or outline development plan. The provision of Section 17(2) needs to be considered against the backdrop of this scheme of the Act. It bears reference that Section 17(2) was inserted on 21.02.2023, which came into force on 02.03.2023 before Section 39-A was brought into force.

17.3 As is apparent from its text, apart from correction of inadvertent errors, Section 17(2) allows "correction of inconsistent or incoherent zoning proposals" in the RP. This expression, the meaning and content of which is by no means clear, raises a host of issues concerning constitutional limitations. In the first place, the expression is vague and uncertain and, in that sense, does not properly guide or control the discretion given to the statutory authority (namely, the CTP). It has been a settled law that where the standard or guide furnished by the statute is 'vague or uncertain', it amounts to

the absence of any guide at all and the law deserves to be struck down as conferring unguided power upon the executive to discriminate. We rely on ***Kathi Raning Rawat vs State of Saurashtra - 1952 SCR 435*** in support of the proposition.

17.4 No doubt, the probable misuse of law is no ground for striking down a legislation. In ***Collector of Customs v. Nathella****, AIR 1962 SC 316*, the Constitution Bench of the Supreme Court *inter alia* held "*…that the possibility of the abuse of the powers under the provisions contained in any statute is no ground for declaring the provisions to be unreasonable or void*." The Supreme Court also quoted with approval the observation of the Court of Appeal of Northern Ireland which stated *inter alia* that "*… the validity of a measure is not to be determined by its application to particular cases…"*.

17.5. It was also observed that "*the constitutional validity of a statute would have to be determined on the basis of its provisions and on the ambit of its operation as reasonably construed**.** If so judged, it passes the test of reasonableness, the possibility of the powers conferred being improperly used is no ground for pronouncing the law itself invalid…"*.

17.6 Nonetheless, keeping in mind the fragility of the ecosystem of Goa, we cannot ignore the materials placed before us demonstrating the way the power is being exercised. The proof of open-endedness of such expression is to be found in the

way the executive has been exercising powers under Section 17(2). The CTP has been allowing applications of individual plot owners to change the zone of their lands under Section 17(2). If the threshold of'inconsistent or incoherent zoning proposals' is considered so inclusive as to even allow modification of an approved and notified RP by changing use of land parcels within a zone, several anomalies ensue. In the first place, the subject of change of zone for a particular land parcel forming part of a RP is specially provided for in section 39A of the Act. It is also necessary for us at this stage to refer to Section 16B which was inserted on 30.08.2018 which came into force on 03.10.2018 and was omitted on 22.02.2024 after Section 17(2) was brought into force on 02.03.2023. Section 16B provided a detailed procedure for change of zones by inviting individual applications but the proposals were to be considered after applying the provisions of Sections 12 to 15 of the TCP Act. The CTP was required to carry out surveys and submit his report to the Board and the Government under the omitted Section 16B. Section 17(2) completely dilutes the mandate of the TCP Act, 1974.

17.7 It is indeed a special subject that calls for a town planner's attention. There always is a human element in urban planning and development. Even the most carefully considered and comprehensive zoning laws cannot anticipate peoples' needs to act outside the planning restrictions, calling for resolution by creating an exception to the zoning law to permit the desired use. Such zoning variances are needed (a) when the shape of

the land parcel or its other characteristics or the zoning law itself prevents the owner from using the property in a way comparable to surrounding properties ("area variances"), or (b) when it is appropriate to allow, in the facts of the case, activities which would otherwise be prohibited on the land ("use variances"). If making of such exception on account of area or use variances is a special subject covered by Section 39A, obviously the general provision of Section 17(2) cannot be invoked to deal with it. But more importantly, if both provisions were to be available to the executive for changing the zone of a land parcel, that would be a matter open to the vice of unlawful discrimination. Section 39A has a far stricter threshold. So also, Section 16B, which was already in force when Section 17(2) was brought into effect. For one, Section 39A calls for an approval of the Board; secondly, it calls for a public notice and participation by offering suggestions; thirdly, the provision has an inherent constraint in that it eschews changing of the overall character of the existing RP. Per contra, Section 17(2) has no such constraint; the CTP has a discretion to carry out such alteration without involving the Board or public by simply notifying the alteration in the Official Gazette. If two similarly placed landowners are treated unequally by requiring resort alternatively to Section 17(2) or 39A of the Act at the whim of the executive, Section 17(2), on that interpretation, calls for judicial scrutiny for the vice of unequal treatment of equals.

17.7 Whenever validity of a statute is challenged as

violative of Article 14, the Court should, before annulling it, attempt to read it down, that is, to narrow its scope by interpretation so that it may be valid. The principles of reading down are laid down in the case of ***Premium Granites vs State of Tamil Nadu, reported in (1994) 2 SCC 691 and Delhi Transport Corporation v/s. D. T. C. Mazdoor Congree & Ors. Reported in 1991 Supp (1) SCC 600*** *at paragraph nos. 119, 216, 218, 320 to 325 and 329*).

17.8 There is thus a case for reading down Section 17(2) to make it valid and intra vires the Constitution. The expression "inconsistent or incoherent zoning proposals" will have to be accordingly suitably read. First of all, zoning is an essential aspect of any town planning exercise. The base purpose of zoning is two-fold: (i) to separate activities that do not go well together, such as keeping residential neighborhoods away from industrial areas, and (ii) as a framework to guide the growth of a municipality according to a larger land use scheme such as a comprehensive plan. The TCP Act contemplates both an overarching comprehensive plan, called an 'RP' and 'ODP' within the former plan. Zoning within the RP thus serves the purpose of separating incompatible activities and provides a framework for guiding growth according to the Outline Development Plan. In that context, inconsistent or incoherent zoning proposal can only mean a proposal being inconsistent with another proposal forming part of the RP or with the comprehensive plan or incoherent in the context of the comprehensive plan; it cannot

imply placing of a land parcel within the zone for which an exception can be made. That is no inconsistency or incoherence within the meaning of section 17(2) of the Act.

17.9 Accordingly, Section 17(2) deserves to be read down to avoid the vice of arbitrariness and hostile discrimination by interpreting the expression "inconsistent or incoherent zoning proposals" to mean 'inconsistency or incoherence of a zoning proposal with respect to another proposal in the RP, or with respect to the Outline Development Plan'; it would in no case imply change of zone of a land parcel having regard to its peculiar facts.

18. Again, the challenge needs to be considered in the context of Article 21 of the Constitution. For this, it would be important to understand why is there an emphasis on planned development of cities which is sought to be achieved by zonal planning and regulating building construction activity. This concept is explained by Their Lordships in ***Friends Colony Development Committee v/s. State Of Orissa And Others – 2004 (8) SCC 733***, Paragraph 22 is significant in the context, the same reads thus:-

> " ***22.*** *In all developed and developing countries there is emphasis on planned development of cities which is sought to be achieved by zoning, planning and regulating building construction activity. Such planning, though highly complex, is a matter based on scientific research, study and*

experience leading to rationalisation of laws by way of legislative enactments and rules and regulations framed thereunder. Zoning and planning do result in hardship to individual property owners as their freedom to use their property in the way they like, is subjected to regulation and control. The private owners are to some extent prevented from making the most profitable use of their property. But for this reason alone the controlling regulations cannot be termed as arbitrary or unreasonable. The private interest stands subordinated to the public good. It can be stated in a way that power to plan development of city and to regulate the building activity therein flows from the police power of the State. The exercise of such governmental power is justified on account of it being reasonably necessary for the public health, safety, morals or general welfare and ecological considerations; though an unnecessary or unreasonable inter-meddling with the private ownership of the property may not be justified."

18.1 As explained by Their Lordships, it is thus important to bear in mind that planning is a highly complex exercise based on scientific research, study and experience leading to rationalisation of laws by way of legislative enactments and rules and regulations framed thereunder. Undoubtedly, zoning and planning do result in hardship to individual property of the owners as their freedom to use their property in the way they like, is subjected to regulation and control. The private interest

stands subordinated to the public good. The interest of private owners is definitely affected. However, all this is for the larger public good.

18.2 In ***Bombay Dyeing and Mfg. Co. Ltd. Vs. Bombay Environmental Action Group and Ors***. (supra), Their Lordships have explained the concept of sustainable development and planned development vis-a-vis Article 21 of the Constitution of India. These principles need to be borne in mind. The relevant paragraphs are 251 to 263, 266, 272 to 273, 275 and 276, quoted below for profitable reference:-

> *"251. It is often felt that in the process of encouraging development the environment gets sidelined. However, with major threats to the environment, such as climate change, depletion of natural resources, the entrophication of water systems and biodiversity and global warming, the need to protect the environment has become a priority. At the same time, it is also necessary to promote development. The harmonization of the two needs has led to the concept of sustainable development, so much so that it has become the most significant and focal point of environmental legislation and judicial decisions relating to the same. Sustainable development, simply put, is a process in which development can be sustained over generations. Brundtland Report defines 'sustainable development' as development that meets the needs of the*

present generations without compromising the ability of the future generations to meet their own needs. Making the concept of sustainable development operational for public policies raises important challenges that involve complex synergies and trade offs.

252. The Indian judiciary has time and again recognised this principle as being a fundamental concept of Indian law.
253. In ***Vellore Citizens' Welfare Forum v. Union of India and Ors. – AIR 1996 SC 2715****, this Court laid down the salient principles of sustainable development consisting of the Precautionary Principle and the Polluter Pays Principle being its essential features stating: The "Precautionary Principle" in the context of the municipal law - means:*
(i) Environmental measures by the State Government and the statutory authorities must anticipate, prevent and attack the causes of environmental degradation.
(ii) Where there are threats of serious and irreversible damage, lack of scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.
(iii) The "onus of proof" is on the actor or the developer/industrialist to show that his action is environmentally benign.

254. This Court, referring to Articles 48A and 51A(g) of the Constitution of India, observed that the aforementioned

principles are part of the constitutional law.

255. In ***Intellectual Forum, Tirupathi v. State of A.P. and Ors. -AIR 2006 SC 1350****, it was stated: In light of the above discussions, it seems fit to hold that merely asserting an intention for development will not be enough to sanction the destruction of local ecological resources. What this Court should follow is a principle of sustainable development and find a balance between the developmental needs which the respondents assert, and the environmental degradation, that the appellants allege.*

256. The MRTP Act does not exclude these principles. Unless they are so excluded, they are to be read in the statute both in the substantive legislation as also delegated legislation.

257. In ***A.P. Pollution Control Board v. Prof. M.V. Nayudu (Retd.) and Ors. - [1999] 1 SCR 235****, this Court reiterated the necessity of institutionalizing scientific knowledge in policy-making or using it as a basis for decision-making by agencies and courts.*

258. In ***Narmada Bachao Andolan v. Union of India and Ors. – AIR 2000 SC 3751****, this Court emphasized the exercise which is required to be undertaken by the committees before policy decisions are taken.*

*259. In **M.C. Mehta v. Union of India and Ors. : (1996) 4 SCC 351**, this Court directed shifting of industries which are not in conformity with the provisions of the Master Plan.*

*260. Yet again in **M.C. Mehta v. Union of India and Ors. - (2004) 6 SCC 588**, this Court negatived the attempt on the part of the State for in situ regularization by way of change of policy. The court emphasized that in terms of Article 243W of the Constitution of India, the Municipalities have constitutional responsibilities of town planning stating: The Municipal Corporation has the responsibility in respect of matters enumerated in the Twelfth Schedule of the Constitution of India, regulation of land use, public health, sanitation, conservancy, solid-waste management being some of them.*

*261. In **M.C. Mehta v. Union of India and Ors. (2005) 2 SCC 186**, this Court issued further directions stating that the Government must have due regard in letter and spirit to aspects that have been mentioned in the earlier place including rights of individuals who are residents of the localities under consideration for in situ regularization by amendment of the Master Plan.*

*262. In **M.C. Mehta v. Kamal Nath and Ors. - (1997) 1 SCC 388**, it was stated: The resolution of this conflict in*

any given case is for the legislature and not the courts. If there is a law made by Parliament or the State Legislatures the courts can serve as an instrument of determining legislative intent in the exercise of its powers of judicial review under the Constitution. But in the absence of any legislation, the executive acting under the doctrine of public trust cannot abdicate the natural resources and convert them into private ownership, or for commercial use. The aesthetic use and the pristine glory of the natural resources, the environment and the ecosystems of our country cannot be permitted to be eroded for private, commercial or any other use unless the courts find it necessary, in good faith, for the public good and in public interest to encroach upon the said resources. [Emphasis supplied]

263. In ***Consumer Education & Research Society v. Union of India and Ors. - [2000] 1 SCR 907****, this Court issued certain directions directing the State to constitute a committee consisting of experts for study of the relevant environmental aspects as also for study of the effects of the present limited mining operation permitted by this Court. The State Government was further directed to take steps to monitor air and water pollution in that area.*

266. In ***Sushanta Tagore and Ors. v. Union of India and Ors. - AIR 2005 SC 1975****, this Court was concerned*

with interpretation of the provisions of Visva-Bharati Act, 1951 which was enacted to preserve and protect the uniqueness, tradition and special features of Visva-Bharati University. Therein, this Court opined: It may be true that the development of a town is the job of the Town Planning Authority but the same should conform to the requirements of law. Development must be sustainable in nature. A land use plan should be prepared not only having regard to the provisions contained in the 1979 Act and the Rules and Regulations framed thereunder but also the provisions of other statutes enacted therefore and in particular those for protection and preservation of ecology and environment. As Visva-Bharati has the unique distinction of being not only a university of national importance but also a unitary one, SSDA should be well advised to keep in mind the provisions of the Act, the object and purpose for which it has been enacted as also the report of the West Bengal Pollution Control Board. It is sui generis.

272. These decisions do not lay down any law which is different from what we have said herein. The development of the doctrine of sustainable development indeed is a welcome feature but while emphasizing the need of ecological impact, a delicate balance between it and the necessity for development must be struck. Whereas it is not possible to ignore inter- generational interest, it is also not possible to ignore the dire need which the society urgently

requires.

273. In a case of this nature, an endeavour should be made in giving effect to the intention of the legislature. For the said purpose, it is necessary to ascertain the object the legislature seeks to achieve. It may also be necessary to address questions as regards the nature of the statute. Does the statute ex facie point out degradation of the environment? Would by change of user envisaged by the legislature, the existing open space be decreased? Would it be necessary in view of the legislative scheme to invoke the precautionary principles?

275. Mr. Salve has placed before us several decisions of American Courts to suggest that environmental considerations into town planning laws have got the upper hand in the matter of interpretation of the town planning provisions in a broad manner. The said discussions are not relevant for our purpose. He further relied upon a decision of House of Lords in ***South Bucks District Council v. Porter Chichester District Council v. Searle and Ors. (2003) 3 All ER 1*** *wherein it was held: Over the past 60 years there has been ever- increasing recognition of the need to control the use and development of land so as to prevent inappropriate development and protect the environment. This is, inevitably, a sensitive process, since it constrains the freedom of private owners to use their own*

land as they wish. But, it is a very important process, since control, appropriately and firmly exercised, enures to the benefit of the whole community.

*276. The statement of law propounded by us do not lay anything contrary to the said dicta. Herein, an attempt has been made to interpret DCR 58 in such a manner so that it not only enures to the benefit of the whole comm*un*ity but also give effect to the purport and object thereof"*

18.3 We will have to consider the present challenge in the context of what the Hon'ble Supreme Court has said in paragraph 273 quoted hereinabove. As indicated earlier, the power vested under Section 17(2) of the TCP Act is open-ended without providing for any control or guidance. While balancing the concept of a sustainable development with that of environmental concerns, it will be important to bear in mind the fragility of the ecosystem of Goa which we have adverted to hereinbefore.

18.4 It is imperative that development and ecological preservation progress in harmony. The process of regional planning must be undertaken with meticulous attention to detail, ensuring that the region's natural resources and habitats are diligently protected while simultaneously addressing the developmental needs that arise from a burgeoning population.

18.5 Though the freedom of private owners to use their own land as they wish to is pertinent, but, the planning process envisages the benefit of the whole community. The effect of entertaining an application under Section 17(2) tantamount to a change of zone in respect of that portion of the property of the ownership of a private owner within the zone. Section 17(2) no doubt starts with a non obstante clause, however, Section 17(2) cannot be read *de hors* the other provisions of the TCP Act and completely ignoring the aims and objects of the TCP Act, the mandatory nature of the requirements contemplated by the provisions while constituting zones in a RP. The scientific studies, research, survey, the constitution of the task force, the factors considered by the task force, the composition of the task force, comments received from the public, the involvement of the local authorities and ultimately the release of the RP- 2021 on the basis of not only the recommendations of the task force but a SLC constituted is a pointer that while preparing the RP, it is the interest of the community as a whole which is taken into consideration.

18.6 Section 17(2) does not at all take into consideration the interest of the community as a whole but is guided by applications made at the behest of private owners for zone changes. As indicated earlier, the process excludes the involvement of the Board which has a very important role to play in the planning and also the involvement of the public in whose interest the zones are made in the RP. For exercising the power

under Section 17(2), the rules which have been prescribed provide for a constitution of a scrutiny committee to the exclusion of the Board, which in our opinion is a manner of exercising a power de hors the provisions of the TCP Act. It is a settled principle that if the law requires something to be done in a particular manner, then it has to be done in that manner only and in no other manner. It cannot be forgotten that a change of zone directly has an effect on a planned development and that too in respect of an ecosystem which is as fragile as Goa. The environmental concerns in a region like Goa which has 54.06% (188,59,43,700 m²) of ECO zone-1 and 26.29% (116,34,42,300 m²) of ecozone-2 will have to far outweigh the interest of private owners.

18.7 In our opinion the threshold for entertaining an application under Section 17(2) will have to be far higher than what is provided in the rules and in any case much closer to what is provided as per the mandatory provisions of the TCP Act whenever any major changes are to be made to a RP. It is important to notice Rule 4(f) of the 2023 Rules which says that before carrying out an alteration or modification to the RP, the CTP may consult such authority as he deems necessary. Factually, the Board in its 188th meeting has decided to form a sub-committee consisting of members of the Board and other professionals to scrutinize the proposals under Section 17(2). The Member Secretary of the Board was directed to issue the order or notification in this regard. In terms of the said direction

the CTP and Ex-Officio Joint Secretary issued the notification dated 24.05.2023 published in the Government Gazette dated 25.05.2023 by and in the name of the Governor. By the said notification, the formation of the expert committee and its composition was notified. For one, Rule 4(f) provides for a consultation by the CTP with such other authority as he deems necessary. The TCP Act does not confer any power on the Board to delegate its functions under the Act to a scrutiny committee to its own exclusion. Such an exercise by the Board, delegating its power to the Scrutiny Committee under Rule 4(f), in our opinion, is *de hors* the provisions of the TCP Act. The Board can only ask the Scrutiny Committee to scrutinize the applications but it cannot abdicate its functions and powers.

18.8 Further, the survey to be conducted under the rules as can be seen from the form 'A' is to be submitted by the applicant in respect of his individual plot in that zone. The survey for the purpose of preparing the RP is an over-all survey whereas in terms of the rules the survey is based on the applicant submitting a report from a registered professional. Further, though the rules provide that 'the extent of alterations/modifications in the RP shall be as specified in these rules and as per the Guidelines approved by the Government', but there is no indication in the rules as to what is the extent of such alteration/modification which can be made. By way of the Guidelines/Circular issued in terms of rules, the applications/cases which can be considered as inadvertent errors

is specified and so also 'inconsistent/incoherent zoning proposals' and 'alterations/modifications'. Rule 5 does not provide for any guidance or control as to what can be an inadvertent error or what are the cases of inconsistent/incoherent zoning proposals and alterations/ modifications, and therefore, conferring such unguided power can virtually have the effect of destroying the elaborate concept of a planned development under the TCP Act. This we find, is irrational and arbitrary. We therefore do not have any hesitation in striking down the 2023 Rules and the Guidelines framed thereunder.

19. In **Naresh Chandra Agrawal Vs. Institute of Chartered Accountants of India (ICAI) & Others, 2024 SCC OnLine SC 114**, the Supreme Court has distilled and summarized the following legal principles that may be relevant in adjudicating cases where subordinate legislation are challenged on the ground of being ultra vires to the parent Act. Paragraph 35 which is relevant reads thus:

> *(a) The doctrine of ultra vires envisages that a Rule making body must function within the purview of the Rule making authority, conferred on it by the parent Act. As the body making Rules or Regulations has no inherent power of its own to make rules, but derives such power only from the statute, it must necessarily function within the purview of the statute. Delegated legislation should not travel beyond the purview of the parent Act.*
>
> *(b) Ultra vires may arise in several ways; there may be simple excess of power over what is conferred by the parent Act; delegated legislation may be inconsistent with the*

provisions of the parent Act; there may be non-compliance with the procedural requirement as laid down in the parent Act. It is the function of the courts to keep all authorities within the confines of the law by supplying the doctrine of ultra vires.

(c) If a rule is challenged as being ultra vires, on the ground that it exceeds the power conferred by the parent Act, the Court must, firstly, determine and consider the source of power which is relatable to the rule. Secondly, it must determine the meaning of the subordinate legislation itself and finally, it must decide whether the subordinate legislation is consistent with and within the scope of the power delegated.

(d) Delegated rule-making power in statutes generally follows a standardized pattern. A broad section grants authority with phrases like 'to carry out the provisions' or 'to carry out the purposes.' Another sub-section specifies areas for delegation, often using language like 'without prejudice to the generality of the foregoing power.' In determining if the impugned rule is intra vires/ultra vires the scope of delegated power, Courts have applied the 'generality vs enumeration' principle.

(e) The "generality vs enumeration" principle lays down that, where a statute confers particular powers without prejudice to the generality of a general power already conferred, the particular powers are only illustrative of the general power, and do not in any way restrict the general power. In that sense, even if the impugned rule does not fall within the enumerated heads, that by itself will not determine if the rule is ultra vires/intra vires. It must be further examined if the impugned rule can be upheld by reference to the scope of the general power.

(f) The delegated power to legislate by making rules 'for carrying out the purposes of the Act' is a general delegation, without laying down any guidelines as such. When such a power is given, it may be permissible to find out the object of the enactment and then see if the rules

framed satisfy the Act of having been so framed as to fall within the scope of such general power confirmed.

(g) However, it must be remembered that such power delegated by an enactment does not enable the authority, by rules/regulations, to extend the scope or general operation of the enactment but is strictly ancillary. It will authorize the provision of subsidiary means of carrying into effect what is enacted in the statute itself and will cover what is incidental to the execution of its specific provision. In that sense, the general power cannot be so exercised as to bring into existence substantive rights or obligations or disabilities not contemplated by the provisions of the Act itself.

(h) If the rule making power is not expressed in such a usual general form but are specifically enumerated, then it shall have to be seen if the rules made are protected by the limits prescribed by the parent Act.

20. With this background, we may now apply the principles to the factual context obtained in the instant case. In the instant case, the ultra vires challenge has been mounted on the ground that the impugned Rules exceeds the power conferred by the parent Act. If we look at the parent Act, the Rule making power has been conferred under Section 17(2). The alteration/ modification to the RP may be carried out by the CTP by notification in the official gazette "in such manner and only to such extent as prescribed". Section 140 is the general rule making power. Sub-section 2 provides for enumerated heads. Rule 3 provides the procedure for alteration/modification to RP. The challenge is on the ground that the Rules travel beyond the powers of the parent Act. It is well settled that if the statute provides for certain functions to be exercised by a body, then it

must be exercised by that body only. If this power is to be delegated to another body, the law must permit for delegation of such power. As discussed earlier, there is no power in the Board to delegate its functions and powers.

21. The whole purpose of planned development is to ensure that the planning is not haphazardly done. The RP is prepared in public interest. The whole idea in providing for zone is that the development takes place within those zones and elaborate procedure and a scientific methodology is followed in preparing the RP. The survey is a comprehensive survey. The RP may be for a particular region, which may comprise of a part of a State or a larger area so far as Goa is concerned. The RP- 2021 is for the entire State of Goa. The RP for Goa is prepared bearing in mind the fragile eco-system in Goa. In respect of RP-2021, or for that matter, when a new RP is to be prepared, an elaborate exercise is carried out while proposing the zone. This passes through various layers. Surveys are conducted by the CTP. The Board makes it's recommendations and public comments are invited. The Government notifies the RP. The RP is thus, a holistic document, which keeps in mind the aspirations of the people and overall it is in public interest.

22. Rule 5 of the Rules does not specify or give any indication as to what are the circumstances under which the inconsistent or incoherent zoning proposal needs corrections. The same is done by the guidelines. Thus, neither Section 17(2) nor the

Rules provide any guidance as to how the Executive should entertain the applications for correcting inconsistent/incoherent zoning proposals. For example, Section 17(2) only mentions inadvertent error without specifying as to what that inadvertent error is. The Rule does not define what is an 'inadvertent error'. The 2023 Rules confer unfettered and unguided authority on the Executive to interpret what is meant by an inadvertent error or what is an inconsistent/incoherent zoning proposal. There is no guidance in the 2023 Rules itself as to what is an 'inadvertent error or incoherent or inconsistent zoning proposals'. The power is open- ended. The Act or the Rules do not prescribe any guidance for exercising such power. There is no doubt that the inadvertent errors can be corrected and even the petitioners say so, but cannot be expanded to the extent prescribed by the Guidelines. We are satisfied that the manner in which the rules are framed and the circular issued is not in furtherance of a development in public interest by maintaining a balance between sustainable development viz-a-viz the environmental issues, but is concerned with the interest of private land owners. For example, since it is a matter of record and even according to the State, as on 02.01.2025, there have been 353 approvals under Section 17(2) which affects an area of about 26,54,286 square meters. This may be a miniscule percentage as contended by Mr. Devitre, learned Senior Advocate appearing for the State, but the applications are being filed, entertained and conversions granted for which there is no outer limit. Almost all the conversions are from paddy fields, natural cover, no

development zone and orchard to settlement zones. Such plot-by-plot conversion, creating a zone within a zone, virtually has the effect of mutilating the RP prepared after such an elaborate exercise.

23. In our opinion, the 2023 Rules travel beyond the TCP Act. Under the TCP Act there is no provision for delegating the power of the TCP Board whereas under the rules the Board has delegated its powers to a scrutiny committee for scrutinizing applications. Whereas under the TCP Act for a revision of a RP or in the newly inserted provision viz Section 39A, in respect of a change of zone, the public opinion has to be taken into consideration, but for exercising powers under Section 17(2) there is no provision for inviting public objections or calling for public comments. We therefore have no hesitation in striking down the 2023 Rules and consequently the Guidelines/Circular issued thereunder.

24. Hence the following order:

(a) The relief claimed by the petitioners for declaring Section 17(2) of the TCP Act, 1974 as unconstitutional is rejected. Section 17(2), however is read down to avoid the vice of arbitrariness and hostile discrimination by interpreting the expression "inconsistent or incoherent zoning proposals" to mean 'inconsistency or incoherence of a zoning proposal with respect to another proposal in the RP, or with respect to the Outline Development Plan; it would in no case imply change of zone of a land parcel having regard to its peculiar facts.

(b) The Goa Town and Country Planning (Alteration/Modification in the Regional Plan for Rectification of Inconsistent/Inadvertent Zoning Proposals) Rules, 2023 are struck down, being ultra vires the provisions of the Constitution and the TCP Act, thereby rendering the Guidelines for the Alteration/Modification to be carried out under Section 17(2) issued by the Town and Country Planning Department vide Circular No.21/1/TCP/GTCPACT/ 2023/987 dated 27.03.2023 null and void.

(c) It is made clear that we have only considered the challenge to Section 17(2) of the Act and the 2023 Rules.

25. List the petitions for further consideration after four weeks.

26. At this stage, Mr Devitre, learned Senior Advocate for the State requests for stay of this order. Considering the nature of the challenge we stay the operation of this order for a period of six weeks. However, we make it clear that there shall be no consideration of the applications for approvals made under Section 17(2) of the TCP Act.

NIVEDITA P. MEHTA, J. **M. S. KARNIK, J.**

Signed by: SUCHITRA NANDAN SINGBAL
Designation: Personal Assistant
Date: 13/03/2025 18:18:57

Analysis of 20 cases post affidavit-in-reply recd. from the C.T.P. dt. 12.03.2025

(*all plots rezoned under S. 39A to settlement, except No.20, which is rezoned for commercial*):

Sr. No.	Village	Area (sq mt)	RP 2021 zoning	Proposed zone change in RP 21 under S. 39A	Comments of C.T.P in Affidavit in reply dt. 12.03.2025	Petitioner's remarks
1.	Ella, Se-Old Goa Sy.No.68/1-C (Proposal is from a real estate co)	1,64,015	Orchard	Settlement	i) Orchard is not eco-sensitive 179/19 (a) ii) Slope of property < 25%, 178 (17) (c) iii) Access through same owners adjoining property with 10 mts R.O.W. (Right of Way)	i) Incorrect ii) Yet to be correctly ascertained. iii) This is a proposed RP Road, not an existing road
2.	Assagao Sy.No. 101/1-Part	16,000 out of 2,00,000	Natural cover with small **NDS** area	Settlement	i) Natural cover is not ecosensitive 181/24f ii) N.D.S admitted (part)	i) Incorrect ii) NDS Admitted (part) iii) Proposed road
3.	Mandrem Sy.No. 124/0 (Proposal is from a real estate co)	50,401 out of 69,043	Partly orchard **Part NDS** 185 (30) e)	Settlement	i) Orchard not eco-sensitive ii) N.D.S.	i) Incorrect ii) Road is proposed

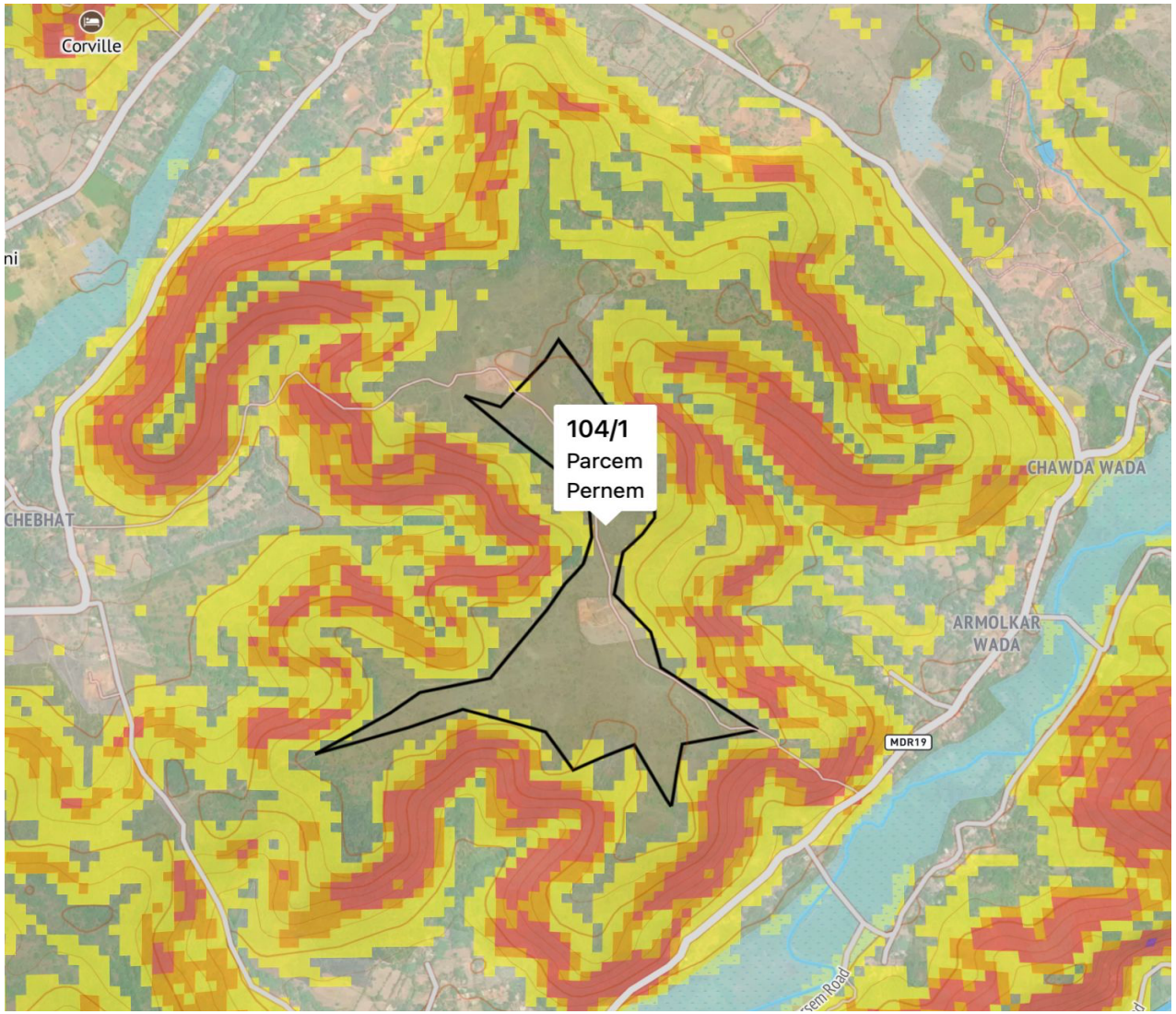
4.	Oxel Sy.No.31/1E (Proposal is from a real estate co)	40,660	Natural cover and NDS/and CADA		Yet to be placed before TCP Board Property purchased in 2021	
5.	Loliem Sy.No. 173/2	11,174	Part Natural cover Part **NDS**	Settlement	i) Settlement partly Orchard & Partly Natural cover with **NDS** (para 43e) ii) Board says not ecosensitive (para 44a) iii) Though RP 2021 marked as **NDS,** property is within permissible gradient as per contour plan submitted and also site condition (para 43g)	i) Does not tally with RP ii) Incorrect iii) Incorrect. NDS as per data available
6.	Parcem Sy.No. 104/1P (Proposal is from a real estate co)	46,700 out of Total area 4,12,022	Orchard with **NDS & no access road**	Settlement	i) Area accessible by 8 mts road 193 (49 d) ii) Area applied for does not have **NDS** 49 e iii) Slope is permissible gradient 49 f iv) Board says not eco-sensitive	i) Incorrect. Road does not appear on the RP. ii) Property surrounded by steep slopes iii) Access is through steep slope Iv) Incorrect Property purchased in July 2023
7.	Parcem	51,133	Orchard with			i) Incorrect. Road does not appear on the RP.

	Sy.No. 104/1P (Proposal is from a real estate co)	out of Total area 4,12,022	**NDS & no access road**			ii) Property surrounded by steep slopes iii) Access is through steep slope Iv) Incorrect Property purchased in Dec 2023
8.	Parcem Sy.No. 13/1(P)	38129 out of 1,16,129	Orchard	Settlement	Yet to be placed before Board	
9.	Corgao Sy.No. 237/0 (Proposal is from a real estate co)	92,175	Orchard	Settlement	i) Accessible by 6 mts road para 66(d) ii) TCP Board says not eco-sensitive 67(a)	i) Incorrect ii) Incorrect Property purchased in Nov 2023
10.	Corgao Sy.No. 238/0	1,68,800	Orchard	Settlement	Yet to be placed before Board. Property purchased in April 2015	
11.	Latarbarcem Sy.No. 380/1 (Malik)	20,750	NDS/no road	Settlement	Yet to be placed before Board	
12.	Latarbarcem Sy.No. 400/1P (Malik)	11,025	Partly CADA Partly orchard	Settlement	Yet to be placed before Board	
13.	Latarbarcem	79,075	Partly CADA	Settlement	Yet to be placed before Board	

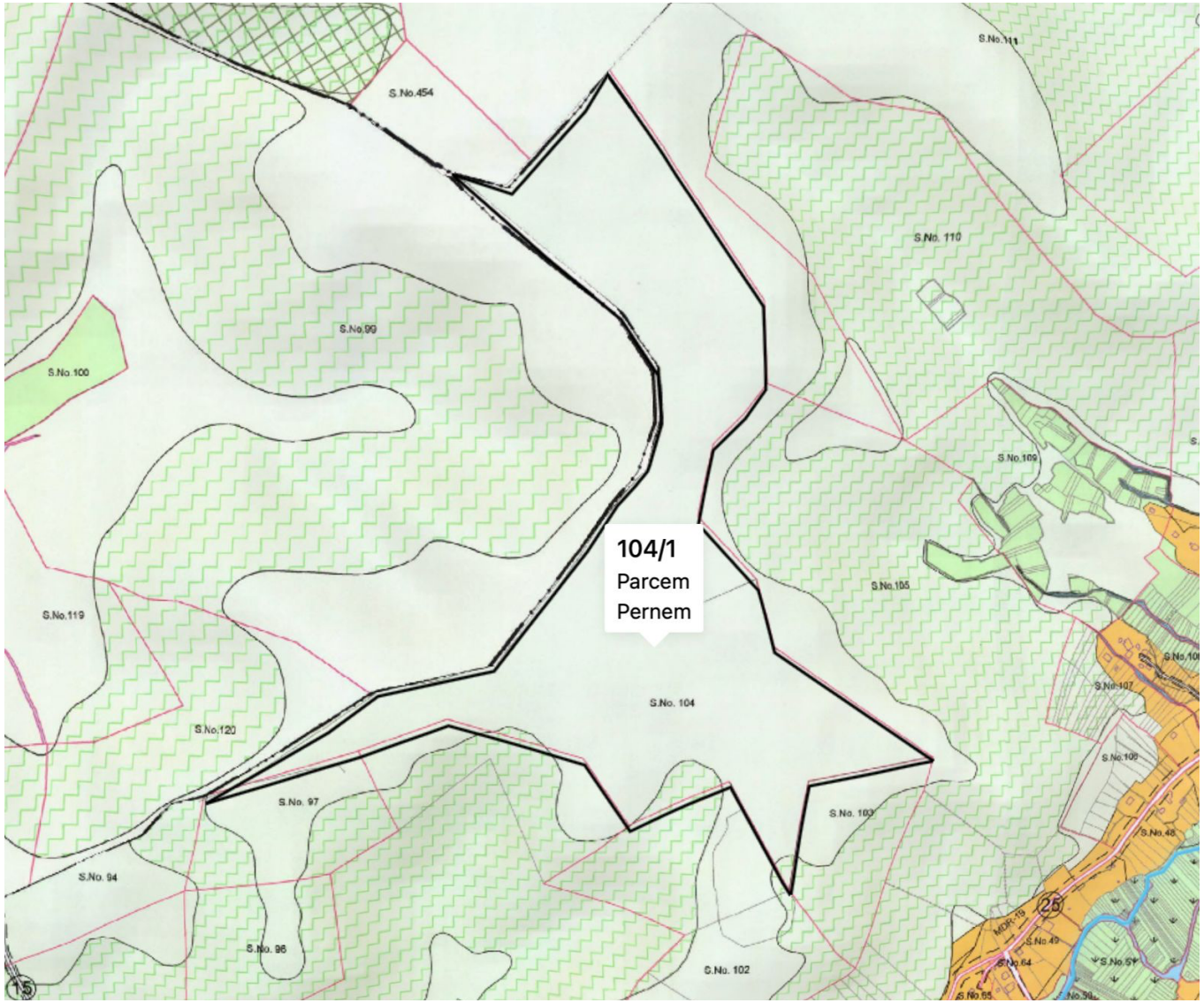
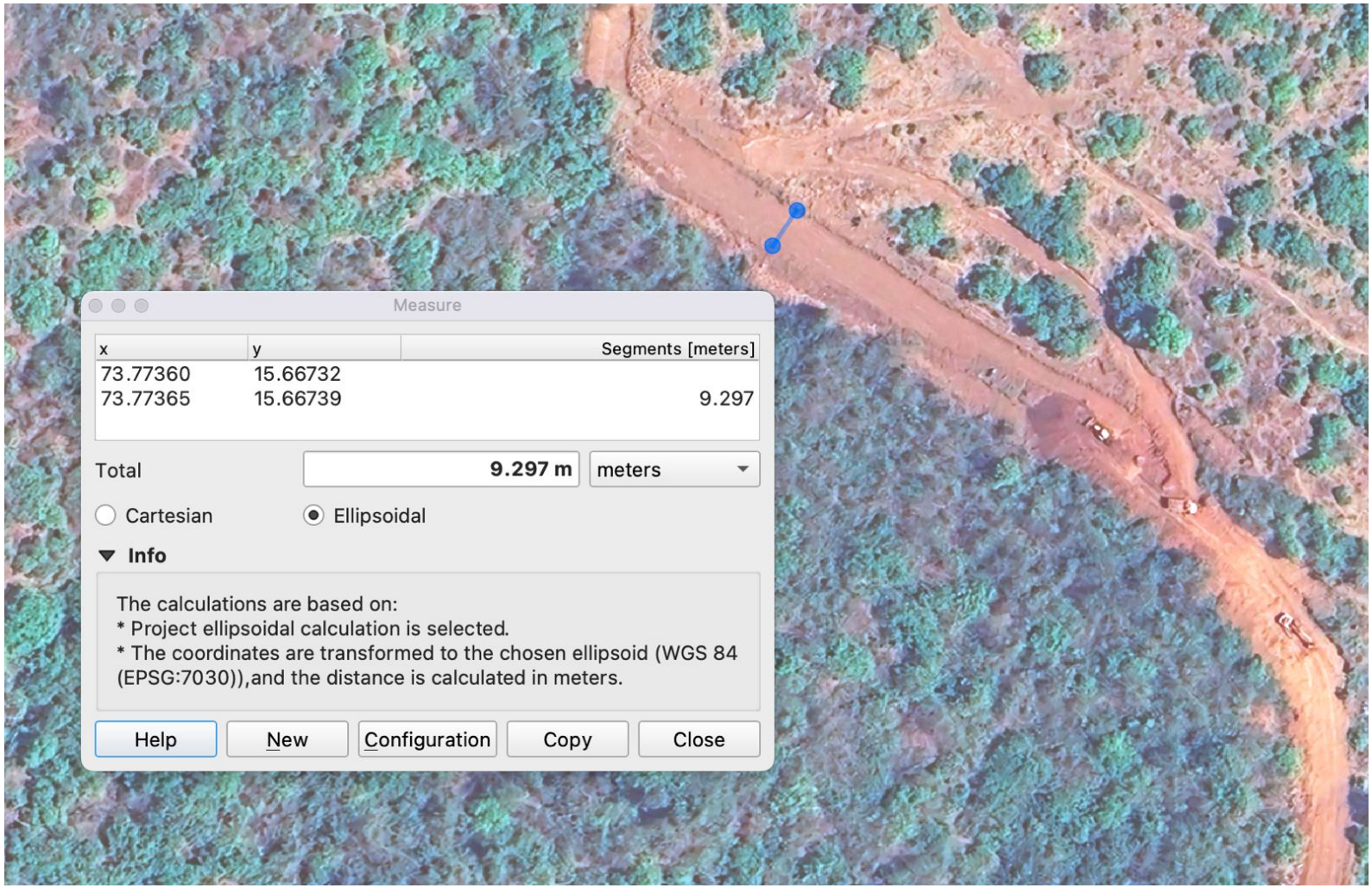
	Sy.No. 420/0 (Malik)		Partly orchard			
14.	Oxel Sy.No. 81/4	11633	Paddy field and CADA	Settlement	Yet to be placed before Board	
15.	Parra Sy.No. 199/2 (Proposal is from a real estate co)	2175	Agricultu re with CADA	Settlement	Yet to be placed before Board Property purchased in April 2022	
16.	Arpora Sy.No. 8/7	8,750	Paddy field	Settlement	i) As per Arpora Nagao ODP partly Agriculture A1 with Irrigation Command Area Pg 220/102d ii) Form I & XIV not rice / paddy field para 102 e iii) Plot is not cultivated and without much tree cover para 102 B iv) Not eco-sensitive since not rice in revenue record nor is under cultivation para 103 e v) Board recommended change of zone from paddy field with Irrigation Command Area para 105	CADA Area Property purchased in April 2017
17.	Siolim Sy.No. 245/1 (Parcel-I)	5027 out of	Private forest/nat ural	Settlement	i) Application for 13000 m2 Page 223 para 108 (c)	Zone change cannot be granted as no access

	(Jaijeet Singh Tehlan)	83,900 m2	cover with NDS		ii) Property is not directly accessible para 108 d iii) TCP Board says property is not eco-sensitive para 109 (a)	Property purchased in May 2022
18.	Siolim Sy.No. 245/1 (Part C) (Jaijeet Singh Tehlan)	12,700 out of 83,900	Private forest/natural cover with NDS	Settlement	i) Application is for 12,700 Pg 225 para 113 ii) Accessible by 8 mt tar road with 10 mt proposed RP Road p.226/114(d) iii) Board says not ecosensitive pg 227 para 115 (a)	i) Proposed, not existing. ii) Incorrect Property purchased in February 2022
19.	Siolim Sy.No. 245/1 (Part) (Jaijeet Singh Tehlan)	10,741 out of 83,900	Private forest/natural cover with NDS	Settlement	Yet to be placed before board pg 231 para 123 Property purchased in May 2024	
20.	Candolim Sy.No. 59/3A	1500	Khazan	Commercial C1	i) Total area purchased by 4 sales deeds is 2500 sq mts. Pg 232 para 125 a, b ii) Application is for change from residential to commercial iii) Calangute – Candolim ODP zoned plot as residential and partly CRZ	Khazan to C1 is not permissible. Property purchased in June 2024

Satellite images of the Parsem Plateau area, including slope height visuals based on Cartosat/NASADEM data. Areas marked in yellow are slopes having a gradient between 20-25%, while areas marked in red are slopes having a gradient of over 25%



Extract of the R.P. 2021 Goa pertaining to the Parsem Plateau area. Subject plot Sy. No. 104/1 is surrounded by steep slopes, without any access road reflected on the R.P.



Kaccha road between 8-10 m in width illegally being built from the South east side of Sy. No. 104/1, Parsem. No such road reflected in the R.P., which marks this area as N.D.S.